Circuit Court for Montgomery County
Estate No. W87973
Civil No. 425847

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 1508
September Term, 2016
Nos. 546, 1226
September Term, 2017

IN RE: ESTATE OF DR. DINESH O. PARIKH

No. 548
September Term, 2017

OXANA PARIKH, *et al.*
v.
LYNN C. BOYNTON, *et al.*

Wright,
Kehoe,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 16, 2019

The cases before us began with the death of Dr. Dinesh O. Parikh ("Dr. Parikh") on June 18, 2016. Dr. Parikh had lived and worked in both India and North Carolina. His two children, Tina Parikh-Smith ("Tina")[1], an appellee, and Namish Parikh ("Namish"), an appellant, live in the United States.[2] In early 2016, Dr. Parikh and Neelaben Parikh ("Neela")[3], also an appellee, were in India, when he was diagnosed with brain cancer. He returned to the United States for treatment at the Washington Hospital Center in February 2016. He died at a rehabilitation facility in Montgomery County, Maryland.

Dr. Parikh's last will and testament (the "Will"), dated July 30, 2014, made no provision for Tina, Namish, or Neela. Instead, he left his entire estate to Oxana Parikh ("Oxana"), an appellant. On the same day the Will was signed, Dr. Parikh also signed a durable power of attorney (the "2014 power of attorney"), naming Oxana as his attorney-in-fact. Who is Oxana? She is Namish's former wife, Dr. Parikh's former daughter-in-law, and the mother of one of his three grandchildren. She and Namish divorced in 2010.

No later than February 16, 2016, Dr. Parikh's doctor at the Washington Hospital Center had deemed him "incapacitated" and advised Oxana, a registered nurse at the Washington Hospital Center, that Dr. Parikh had anywhere from three months to five

[1] We will refer to the individual family or former family members by their given names simply to avoid confusion.

[2] Tina lives in North Carolina. Namish lives in Montgomery County, Maryland.

[3] Neela and Dr. Parikh married in India on April 30, 2012, but, as we will later discuss, the validity of that marriage is disputed.

years to live.[4] Oxana, allegedly to pay for his medical expenses, began to liquidate Dr. Parikh's assets, about $1.14 million of which she "gifted" to Namish. And, in March 2016, she also filed for an uncontested divorce from Neela on Dr. Parikh's behalf.[5]

After Dr. Parikh's death, Oxana, the designated personal representative and sole beneficiary of the Will, filed, on June 21, 2016, the Will and a petition for small estate administration with the Register of Wills for Montgomery County.[6] And, on July 11, 2016, Tina filed a petition to caveat the Will[7] and, claiming that "a fraud has been and

[4] In a letter dated February 16, 2016, Dr. Georges C. Awah, M.D., Ph.D., wrote, "This letter is to acknowledge [Dr. Parikh] is presently hospitalized at The Washington Hospital Center under my medical care. Mr. Parikh suffers from an acute on chronic debilitating illness that has rendered him incapacitated. He was evaluated by psychiatry and deemed to lack capacity to make health care related decisions. His Power of Attorney, [Oxana] is now his surrogate."

[5] A divorce complaint was filed in North Carolina on March 24, 2016 on the grounds of separation for over a year with no intent to resume the marriage. Oxana signed the complaint using Dr. Parikh's name before a public notary in Maryland, and retained a North Carolina attorney to file it.

An absolute divorce was decreed by the District Court for Onslow County, North Carolina on May 11, 2016. Neela contends that she did not consent to and had no knowledge of the divorce. When she learned about it after Dr. Parikh's death, she filed to vacate the divorce in North Carolina.

[6] A small estate administration is for estates valued at $50,000 or less. Oxana reported the assets of the estate as $25,780.57. Oxana filed a List of Interested Persons that included Namish and Tina as heirs and Oxana as heir/legatee. Stating that Dr. Parikh was divorced, she did not list Neela as an interested person.

[7] Md. Code Ann. (1974, 2017 Repl. Vol.), Estates and Trusts § 5-207, provides:

> (a) Regardless of whether a petition for probate has been filed, a verified petition to caveat a will may be filed at any time prior to the expiration of six months following the first appointment of a personal representative

continues to be committed on her father's estate,"[8] petitioned the Orphans' Court for Montgomery County to remove Oxana as personal representative, appoint a successor, and order an accounting and constructive trust for all estate assets.

Oxana opposed both petitions, arguing that Tina would have standing to request removal of the personal representative only if she prevailed on the caveat. She later supplemented her opposition to state, citing India law and a document from the U.S. Citizenship and Immigration Services, that Dr. Parikh and Neela's marriage was bigamous because they married before the divorce from Neela's ex-husband was completed. She also petitioned the Orphans' Court to transmit factual issues relating to her alleged mismanagement of assets and Dr. Parikh's marriage status for a jury trial.

A hearing was held on Tina's petition to remove the personal representative and appoint a successor on September 9, 2016 before Judge Gary E. Bair sitting as the Orphans' Court. After hearing the parties' preliminary argument on whether to transmit

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> under a will, even if there be a subsequent judicial probate or appointment of a personal representative.
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> * * *
>
> (b) If the petition to caveat is filed before the filing of a petition for probate, or after administrative probate, it has the effect of a request for judicial probate. If filed after judicial probate the matter shall be reopened and a new proceeding held as if only administrative probate had previously been determined. In either case the provisions of Subtitle 4 of this title apply.

[8] Tina claims that Oxana: kept information of Dr. Parikh's location, condition, and treatment from Neela, Tina, and other family members; bought a one-way ticket to India for Neela, who left thinking it was round-trip; cleared out and cancelled the lease on Neela and Dr. Parikh's apartment in Charlotte, North Carolina; obtained a fraudulent divorce for Neela and Dr. Parikh; and conspired and abused her power of attorney to the detriment of Dr. Parikh.

issues to a jury, the court decided to "go ahead" with the hearing. Oxana's counsel objected, arguing that the failure to transmit issues to a jury was "an immediately appealable issue."[9]

Oxana, Neela, and Dio Parikh[10] testified, as did a medical records director and a clerk at Manor Care Chevy Chase, the facility where Dr. Parikh was living at the time of his death. Oxana and Tina were each represented by counsel; Neela was not. At close of the hearing, the court appointed Lynn C. Boynton, Esquire (the "special administrator") as special administrator of Dr. Parikh's estate, which was memorialized in an order entered on September 19, 2016. Oxana appealed that order, ("First Appeal") (No. 1508).

In that appeal, she presents five questions:

1. Whether Tina had standing to petition the Orphans' Court to remove Oxana as personal representative when she was no longer an interested person?

2. Whether the Orphans' Court erred in not transmitting issues of fact to a court of law under Md. Code, Estates and Trusts ("ET") § 2-105?

3. Whether [ET] § 2-105(b)'s mandate that the Orphans' Court "shall" transmit an issue of fact to a court of law conflicts with Md. Rule 6-434(a), which states that a court "may" transmit issues of fact for trial?

[9] The Orphans' Court's denial of transmittal of issues is a final judgment and is immediately appealable. *Banashak v. Wittstadt*, 167 Md. App. 627, 688 (2006).

[10] Dio Parikh (a.k.a. Diark Archelo Parikh or Dwarkesh Parikh) testified that he was Dr. Parikh's older brother and was living in Springfield, Virginia. When Dr. Parikh arrived in February 2016 for medical treatment in the United States, Dio, along with Oxana, picked him up at the airport and drove him straight to the hospital. Dio visited Dr. Parikh regularly while he was in the hospital. He testified that Namish did not want Dio's two other brothers to see Dr. Parikh and that Dr. Parikh complained to the doctors and nurses about Namish.

4. If a conflict does exist, whether [ET] § 2-105(b), which was repealed and reenacted in 2013, takes precedence over Md. Rule 6-434(a) that was adopted in 1990?

5. Whether the Orphans' Court erred in removing Oxana as personal representative under [ET] § 6-306 for making material misrepresentations when the only alleged misrepresentation was prior to Oxana's appointment and prior to the Orphans' Court proceeding?

The special administrator, on October 6, 2016, filed a complaint against Oxana and Namish in the Circuit Court for Montgomery County. Alleging that Oxana had improperly liquated and transferred Dr. Parikh's assets to Namish during the four months prior to Dr. Parikh's death, she sought recovery of the funds. On November 17, 2016, the circuit court signed a consent order requiring the deposit of the disputed funds into the court's registry.

And, as required by the Orphans' Court, Oxana, on November 28, 2016, filed an accounting "for the period of January 1, 2016 through September 9, 2016," listing the total assets of the estate at $1,225,553.90, which included the $1.14 million given to Namish.

Shortly thereafter, Namish, Neela, Oxana, Tina, and the special administrator voluntarily agreed to mediation with Senior Judge Irma S. Raker. Mediation sessions with counsel for each party present were held on October 25, 2016 and November 17, 2016. At the conclusion of the November 17 session, the attorneys for Oxana and Namish, Neela, Tina, and the special administrator signed a two-page document, entitled

"Terms of Agreement—Estate of Dinesh Parikh."[11] In general terms and subject to the Orphans' Court's approval, the estate, after expenses, would be divided as follows: 57% to Namish; 43% to Tina and Neela in accordance with an agreement between them; and Oxana would be reimbursed for certain expenditures.

For several months following the mediation, counsel and the parties were working on a "writing" to be submitted to the Orphans' Court for its approval, during which additional terms and edits in language were discussed. On or about February 8, 2017, Oxana and Namish repudiated the Terms of Agreement, which, in turn, triggered a flurry of Orphans' Court filings. Tina filed an Emergency Motion to Enforce the Terms of Agreement, which the special administrator and Neela supported. The special administrator filed two petitions: to retain an expert on North Carolina law; and for further direction from the Orphans' Court. And, Neela filed an Election to Take Statutory Share of Dr. Parikh's estate.

Oxana and Namish opposed those filings, and Oxana filed an "Emergency Petition to Strike and/to Dismiss Election to Take Statutory Share of Estate by a Bigamous 'Wife'", a "Petition to Remove Special Administrator," and a "Motion to Issue Show

[11] Whether this document is a binding contract is a central issue of dispute, and the parties disagree about what to call it. Boynton, Tina, and Neela refer to it as a "settlement agreement." Oxana and Namish call it a "letter of intent" or "LoI." We shall refer to it as the "Terms of Agreement." The typed document includes hand-written notes, edits, and markings. A copy of the two-page document is attached as an appendix to this opinion.

Cause Order for Hearing on April 25-26, 2017 on Petition to Remove Special Administrator."

A hearing on Tina's motion to enforce the Terms of Agreement was held on April 25-26, 2017, before Judge Richard E. Jordan sitting as the Orphans' Court. At the conclusion of the hearing, the court orally granted Tina's motion. The court found that "the parties reached a binding agreement . . . reflected in the terms of the agreement document," and "to the extent" that "formal approval" by the Orphans' Court was necessary, the court "approve[s] now of the agreement." The judge also noted that "the other motions are moot." A written order dated April 26, 2017 was entered on May 3, 2017 (the "May 3rd Order"), granting the motion to enforce the Terms of Agreement and ordering further steps to be taken in accordance with the settlement terms.

Oxana and Namish filed an appeal ("Second Appeal") (No. 546), presenting five questions:

1. Did the lower court apply the correct standard of review?

2. Is the [Terms of Agreement] a binding and complete agreement?

3. If the [Terms of Agreement] is a binding and complete agreement, then is it (a) ambiguous, (b) in need of reformation, (c) rescinded, (d) void for misrepresentation, or (e) unconscionable?

4. Did the special administrator have authority to settle/compromise on behalf of Estate?

5. Did the Orphans' Court have jurisdiction to enforce/rewrite the [Terms of Agreement]?

During and after the mediation, litigation had continued in the circuit court regarding the special administrator's October 6, 2016 complaint. Oxana and Namish moved to dismiss the complaint, filed an amended answer along with a counterclaim[12], and demanded a jury trial. In response, the special administrator filed a motion for summary judgment regarding Oxana's breach of fiduciary duty, which Oxana and Namish opposed. The special administrator also filed a motion for sanctions for failure to provide discovery, seeking dismissal of appellants' counterclaim and default judgment in her favor. A hearing took place before Judge Ronald B. Rubin on May 12, 2017 in regard to the complaint and the various pending motions.

Between May 12 and May 26, 2017, the circuit court issued several final orders. On May 12, 2017 (nine days after the May 3rd Order in the Orphans' Court), it granted the special administrator's motion to dismiss Oxana's counterclaim, and ordered that the $1.14 million plus interest then held in the court's registry be disbursed to the special administrator. It also granted Tina's motion to dismiss the counterclaim without leave to amend. On May 26, 2017, the circuit court granted the special administrator's motion for summary judgment and her motion for sanctions, along with Neela's motion to dismiss Count IV of the counterclaim.

[12] The counterclaim included the following counts:

- Count I: Declaratory Judgment - Bigamous Marriage (against the special administrator, Neela, and Tina)
- Count II: Abuse of Process (against the special administrator)
- Count III: Negligence and Breach of Fiduciary Duty (against the special administrator)
- Count IV: Civil Conspiracy (against the special administrator, Neela, and Tina)

Oxana and Namish appealed that order ("Third Appeal") (No. 548), presenting eight questions:

> 1. Did [the special administrator] have standing to sue the sole-legatee to protect the interests of a bigamous 'wife,' non-existent trust, and a disinherited daughter; and did SA obtain valid judgments?
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> 2. Did the circuit court improperly refuse to rule on [the special administrator's] motion to stay, which Appellants supported, in light of orphans' court order?
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> 3. Was it proper to award damages prior to finding liability?
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> 4. Were discovery sanctions proper; and, was it proper to deny Appellants' motion for protective order?
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> 5. Were multiple motions to dismiss counterclaim improperly granted; and, was the declaratory judgment count of counterclaim improperly dismissed as moot?
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> 6. Was [the special administrator's] motion for summary judgment properly granted; is there a stand-alone cause of action for breach of fiduciary duty; and, is there a stand-alone cause of action for accounting?
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> 7. Was the prejudgment attachment of Appellants' personal bank accounts in a bank with no physical presence in Maryland proper?
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> 8. Was [the special administrator's] motion to amend final appealable order properly granted; and, were Appellants entitled to a hearing?

On August 3, 2017, Oxana filed a "Petition for Writ of Mandamus and/or Writ of Prohibition in the Court of Appeals," demanding hearings on alleged outstanding petitions and motions.[13] Presumably in response of that petition, the circuit court sitting

[13] The record indicates that this Petition for Writ of Mandamus was denied by the Court of Appeals on September 21, 2017. Oxana filed two other Petitions for Writ of

as the Orphans' Court issued an order, dated August 10, 2017 and entered on August 16, 2017, that stated that it had previously found the Terms of Agreement to be "enforceable," and "reaffirm[ed] as moot" the following petitions: Oxana's petition to strike Neela's statutory share; Oxana's petition to remove special administrator; and Oxana's motion to issue show cause order. That day, Oxana and Namish filed a notice of appeal, ("Fourth Appeal") (No. 1226), presenting three questions:

> 1. Did the lower court violate CJ § 12-701(a)'s automatic stay by enforcing, modifying and/or altering the May 3, 2017 Order granting Tina's motion to enforce settlement agreement, after a proper notice of appeal, by thereafter declaring on August 16, 2017 that Oxana's pending petitions are moot because of the stayed agreement?
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> 2. Did the Orphans' Court have jurisdiction to sua sponte issue the August 16, 2017 order declaring Oxana's pending petitions moot?
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> 3. (a) Were Oxana's then pending petitions moot;
> (b) Were Oxana's then pending petitions moot, even by operation of the stayed settlement agreement currently on appeal in [the Second] Appeal [No. 546]?

Mandamus to the Court of Appeals on November 1, 2017 and September 4, 2018. These were also denied, respectively, on December 13, 2017 and October 25, 2018.

In summary, the consolidated appeals now before us, in the order in which they were filed, are the following:

- The First Appeal (No. 1508) is from the September 19, 2016 order of the Orphans' Court.
- The Second Appeal (No. 546) is from the May 3, 2017 order of the Orphans' Court.
- The Third Appeal (No. 548) is from the May 12 to May 26, 2017 orders of the Circuit Court.
- The Fourth Appeal (No. 1226) is from the August 16, 2017 order of the Orphans' Court.

Appellants have presented 21 often overlapping questions in the four appeals. The briefing exceeds 300 pages; the record extract exceeds 1600 pages. Because we are persuaded that resolution of the four appeals and the ultimate resolution of Dr. Parikh's estate essentially rests on whether the Terms of Agreement was a binding agreement, we will address the Second Appeal first. More facts may be added in our discussion of the issues.

DISCUSSION

The Second Appeal - The Terms of Agreement

Oxana and Namish, Neela, Tina, and the special administrator, each with counsel[14], engaged in the two mediation sessions with Judge Raker on October 25, 2016 and November 17, 2016. A translator for Neela was also present at the mediation sessions. The special administrator was out of town and did not attend the second day of mediation, but her counsel was present. The four attorneys signed the two-page "Terms of Agreement" at the conclusion of the second session.

When Oxana and Namish repudiated the Terms of Agreement and ended their participation in any post-mediation exchanges, they obtained new counsel.[15] A hearing on Tina's motion in the Orphans' Court to enforce the Terms of Agreement was held on April 25-26, 2017, at which Judge Raker, James Debelius, Paul Maloney, and Namish testified.[16] Three of the four witnesses testified that an agreement was reached.

Judge Raker appeared pursuant to subpoena by Tina's counsel. The court limited her testimony to whether there was an agreement and what she, as the mediator,

[14] Thomas M. Wood, IV, Esquire and Michaela Muffoletto, Esquire represented Oxana, Namish, and their minor son. Robert E. Grant, Esquire represented Neela. Paul Maloney, Esquire represented Tina. James Debelius, Esquire represented the special administrator.

[15] Erica T. Davis, Esquire and Samuel D. Williamowsky, Esquire represented Oxana and Namish. Ms. Davis and Mr. Williamowsky withdrew as counsel on July 27, 2017. Oxana and Namish are without counsel in this appeal and they ask that we "liberally construe their pro se briefs." We note that Namish identified himself as an attorney in his testimony at the April 26, 2016 hearing.

[16] Oxana did not attend the hearings on April 25-26, 2017.

understood to be the terms of the agreement.[17] Judge Raker testified that she believed that an agreement was reached on the second day of mediation and that the Terms of Agreement constituted that agreement.[18] According to Judge Raker, she would not have left the mediation if she did not think there was "an agreement and all of the terms nailed down."

Mr. Debelius and Mr. Maloney testified that they each believed an agreement was reached and that the Terms of Agreement was binding on the parties. Even if there was some "fine-tuning" required, Mr. Debelius believed the Terms of Agreement was enforceable.

The lone dissenter to the enforceability of the Terms of Agreement was Namish. He admitted, however, that he had signed the Confidentiality Agreement and that his attorney had signed the Terms of Agreement. But, he testified that his attorney did not have authorization to do so. Judge Jordan found that Namish was "obstructionist,"

[17] Judge Raker explained that generally a mediator cannot be called to testify as to what one person said in the mediation, but there is an exception "when people think they have a settlement agreement and then they need to subpoena a mediator to verify a settlement agreement." The Confidentiality Agreement provided that the "parties and their attorneys agree not to subpoena The Raker Group or the Mediator, nor shall they subpoena any documents submitted to them, *except as necessary to enforce an agreement purportedly reached through mediation*." (Emphasis added.)

[18] [Mr. Maloney:] [W]as there a settlement agreement reached on the second day of mediation, November 17, 2016?
[Judge Raker:] I believe there was.
[Mr. Maloney:] And does this document, [Terms of Agreement], constitute the terms of the settlement agreement.
[Judge Raker:] I believe it does.

"obfuscating," and "resistant to answering [] question[s]," and that he had "zero credibility."

At the conclusion of the hearings, the Orphans' Court found:

> The parties themselves . . . agreed to the terms set forth on the terms of agreement [and] that those terms were material terms of the dispute between the parties. The agreement reached at the end of mediation contemplated reducing that framework that encompassed the material disputed issues and the resolution of them, contemplated that it'd be more formally reduced to written form.
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> * * *
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> The Court finds that the parties reached a binding agreement, that there was a meeting of the minds, reflected in the terms of the agreement document . . . that in and of itself, it's enforceable, and even details . . . that might need to get worked out could be inferred from the parties['] agreement on those material terms.
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> The issues that came up after that agreement are not material to it and do not blow up, if you will, the agreement that was reached. So the Court finds that there's a binding agreement.
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> * * *
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> And to the extent that that might be considered, . . . the Court does approve now of the agreement.
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> * * *
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> [T]he other motions are moot, and the motion to seal was denied.

The Orphans' Court's May 3rd Order granted Tina's motion to enforce the Terms of Agreement.

As to our standard of review, "[i]t is well settled that the findings of fact of an Orphans' Court are entitled to a presumption of correctness." *Pfeufer v. Cyphers*, 397 Md. 643, 648 (2007) (internal citations omitted). On the other hand, "interpretations of

law by [an Orphans' Court] are not entitled to the same prescription of correctness on review: the appellate court must apply the law as it understands it to be." *Id.* In other words, we review an Orphans' Court's legal conclusions de novo.

We will address each of appellants' contentions.

1. Did the lower court apply the correct standard of review?

Appellants contend that the Orphans' Court made a finding of fact[19], but no finding as a matter of law that the parties had formed a binding agreement. They argue that the finding of fact was improper because whether a contract had been formed is a "question of law."

At close of the April 26, 2017 hearing, the court ruled that "there was a meeting of the minds," and that "the parties reached a binding agreement" that was "enforceable." We are persuaded that the Orphans' Court applied the applicable law, which we discuss in more detail below, to its factual findings in reaching that conclusion. In addition, nothing in our review of the record suggests that the presumption of correctness, to which the Orphans' Court factual findings are entitled, was overcome.

2. Is the [Terms of Agreement] a binding and complete agreement?

Characterizing the Terms of Agreement as a "letter of intent," appellants contend that it was not a binding or enforceable agreement. Much of their argument rests on exchanges among the parties over approximately two months after the Terms of

[19] In the preamble to its Order dated April 26, 2017, the Orphans' Court states: "having found as a matter of fact that a binding Settlement Agreement was reached by the parties at mediation . . ."

Agreement was signed. As they see it, any party to the Terms of Agreement could have walked away until the agreement to be submitted to the Orphans' Court was completed and executed by the parties. Unresolved issues that Oxana and Namish characterize as material involve certain stocks and a request for a non-disparagement agreement, which was raised in the mediation but not encompassed in the Terms of Agreement. We will discuss these issues in subsection 3 below.

The formation of a contract requires "a manifestation of mutual assent" as evidenced by an intent to be bound and a definiteness of terms. *Cochran v. Norkunas*, 398 Md. 1, 14 (2007). "Failure of parties to agree on an essential term of a contract may indicate that the mutual assent required to make a contract is lacking." *Id.* And, when the parties do not intend to be bound until a final agreement is executed, there is no contract. *Id.*

In reviewing whether there was an intent to be bound, the *Cochran* Court adopted five factors "widely cited by other courts." They are: "(1) the language of the preliminary agreement, (2) the existence of open terms, (3) whether partial performance has occurred, (4) the context of the negotiations, and (5) the custom of such transactions, such as whether a standard form contract is widely used in similar transactions." *Id.* at 15 (citing *Teachers Ins. and Annuity Ass'n v. Tribune Co.*, 670 F. Supp. 491, 499-503 (S.D.N.Y. 1987). The Restatement (Second) of Contracts provides several additional factors: "(1) whether the agreement has few or many details, (2) whether the amount

involved is large or small, and (3) whether it is a common or unusual contract." *Id.* (citing Restatement (Second) of Contracts § 27, comment c).

Regarding letters of intent, the *Cochran* Court explained:

> A letter of intent is a form of a preliminary agreement. Letters of intent have led to "much misunderstanding, litigation and commercial chaos." 1 Joseph M. Perillo, Corbin on Contracts § 1.16, p. 46 (Rev. ed. 1993). It is recognized that some letters of intent are signed with the belief that they are letters of commitment and, assuming this belief is shared by the parties, the letter is a memorial of a contract. *Id.* In other cases, the parties may not intend to be bound until a further writing is completed. *Id.*

398 Md. at 12-13. Corbin's treatise categorizes letters of intent into four types:

> (1) At one extreme, the parties may say specifically that they intend not to be bound until the formal writing is executed, or one of the parties has announced to the other such an intention. (2) Next, there are cases in which they clearly point out one or more specific matters on which they must yet agree before negotiations are concluded. (3) There are many cases in which the parties express definite agreement on all necessary terms, and say nothing as to other relevant matters that are not essential, but that other people often include in similar contracts. (4) At the opposite extreme are cases like those of the third class, with the addition that the parties expressly state that they intend their present expressions to be a binding agreement or contract; such an express statement should be conclusive on the question of their "intention."

Id. at 13 (quoting Corbin on Contracts at § 2.9). A letter of intent that falls within the third or the fourth category is generally a valid, binding contract. *Id.* at 14.

The "letter of intent" in *Cochran* fell within Corbin's second category ("cases in which [the parties] clearly point out one or more specific matters on which they must yet agree before negotiations are concluded"). 398 Md. at 18-21. The Court reasoned, based on its direct reference to a "Maryland Realtors Contract," that "a reasonable person

would have understood the letter of intent to mean that a formal contract offer was to follow." *Id.* at 18.

In *Falls Garden Condominium Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 308 (2015), the Court of Appeals determined that a "letter of intent" fell within Corbin's third category ("cases in which the parties express definite agreement on all necessary terms, and say nothing as to other relevant matters that are not essential, but that other people often include in similar contracts"). The Court held that the "letter of intent" included, on its face, all the material terms, and that no subsequent or future agreement was necessary. *Id.* at 305-08.

Appellants argue that the Terms of Agreement falls within Corbin's first category (where the parties "say specifically that they intend not to be bound until the formal writing is executed"), but also that Corbin's second category ("cases in which [the parties] clearly point out one or more specific matters on which they must yet agree before negotiations are concluded") would be applicable because the "tumultuous activity of emails and drafts highlights a lack of certainty and definiteness."

We review the *Cochran* factors in the context of the disputed claims leading to the Terms of Agreement, all of which relate to the distribution of Dr. Parikh's estate. Put simply, the most material issue to be resolved was who was to get what of the estate. Prior to the mediation sessions, the parties and their attorneys signed a document titled

"Settlement Facilitation/Mediation & Confidentiality Agreement,"[20] that provided in pertinent part:

> Unless otherwise agreed, no party shall be bound by anything said or done at the settlement proceedings unless a settlement is reached.
>
> * * *
>
> If the parties reach a settlement and execute a written agreement resolving the dispute, the agreement is a legally binding contract between the parties and is enforceable as provided by law.

At the end of the second day of mediation, the Terms of Agreement was typed up and signed by the attorneys.[21]

As to the document itself, the header reads "Terms of Agreement—Estate of Dinesh Parikh." Unlike the disputed documents in *Falls Garden*, 441 Md. at 295 ("This Letter of Intent . . . ."), or *Cochran*, 398 Md. at 6 ("LETTER OF INTENT"), it is not referred to as a "letter of intent." But even if it had been, we are persuaded that it would still fall within Corbin's third or fourth categories.

Below the header, the introductory paragraph reads:

> The parties hereto have agreed to the following terms of settlement, which will be reduced to a writing, which writing will be submitted for the approval of the Orphans' Court for Montgomery County, Maryland. The following recitation is not binding until the full agreement is approved by the Orphans' Court.

[20] There are three identical copies of this document in the record: one signed by Neela and her counsel Robert E. Grant; one signed by Oxana and Namish and their counsel Thomas M. Wood, IV; and one signed by Tina and her counsel Paul Maloney.

[21] Mr. Debelius testified that at around 5:00 p.m. on November 17, 2016, Mr. Grant was asked to type up the Terms of Agreement document, which he did, and the "attorneys then added handwritten interlineation."

The first sentence indicates an intention to be bound by the terms of settlement included in the document, subject only to the approval of the Orphans' Court. There is no reservation involving any particular outstanding terms or matters that needed to be resolved.

Appellants highlight the language "which will be reduced to a writing" and "[t]he following recitation is not binding until the full agreement is approved by the Orphans' Court." They argue that this language contemplates a future agreement, as in *Cochran*, which would not be binding prior to approval by the Orphans' Court. We disagree. Read in the context of the document as a whole, "reduced to a writing" simply indicates that the "following terms of settlement" set out in the Terms of Agreement would be incorporated into a more formal document for submission to the Orphans' Court. It, in no way, suggests that there were any other material terms to be agreed upon. And, although the ultimate binding of the Terms of Agreement was dependent on the Orphans' Court's approval, nothing indicates that the parties had not bound themselves to the "terms of settlement" pending that court's approval.

Nor does the fact that the respective attorneys, rather than the parties themselves, signed the Terms of Agreement render it a non-binding agreement.[22] In *Falls Garden*, the letter of intent, which the Court of Appeals held to be enforceable, was signed only by the attorney representing Fall Gardens Condominium Association and the attorney

[22] Thomas M. Wood, IV signed as "attorney for Oxana + Namish." Robert E. Grant signed "for Neela Parikh." Paul Maloney signed "on behalf of Tina Parikh-Smith." James Debelius signed "on behalf of Lynn Boynton."

representing The Falls Homeowner Association. 441 Md. at 297. There is no evidence that the attorney representing Oxana and Namish did not have the authority to sign the agreement on their behalf other than Namish's statement to that effect, and his credibility was rejected by the Orphans' Court.

In sum, the Terms of Agreement falls under (or, at least, straddles) Corbin's third or fourth categories, and under either, it is a binding and enforceable agreement. The parties agreed to the essential terms of settlement subject only to the approval of the Orphans' Court. Tina would share with Neela a fixed percentage of the estate after expenses based on her agreement with Neela, in exchange for dismissing various claims and renouncing her interest in certain stocks; Namish would receive a fixed percentage; Neela would share a fixed percentage with Tina, receive certain financial accounts located in India and a condo in India, and she could vacate the North Carolina divorce without opposition from the other parties; Oxana would receive payments for certain expenses that she incurred. And, upon final distribution, the parties agreed to general, mutual releases.

3. *If the [Terms of Agreement] is a binding and complete agreement, then is it (a) ambiguous, (b) in need of reformation, (c) rescinded, (d) void for misrepresentation, or (e) unconscionable?*

Even if we conclude that the Terms of Agreement is a binding contract, which we do, appellants attack its enforceability with a fusillade of claims. They characterize the May 3rd Order as an improper reformation of the contract. They also argue that extrinsic parol evidence was improperly admitted by the court at the April 25-26, 2017 hearings

because, if the contract terms were not ambiguous, there was no reason to offer or consider parol evidence.

They further contend that any contract that was formed was "rescinded" by the refusal of Tina, Neela, and the special administrator to abide by its terms. More specifically, they argue: (1) that Tina failed to renounce her interest in Duke Power stock, as required by the Terms of Agreement; (2) that Neela filed an election to take a statutory share of Dr. Parikh's estate; and (3) that the special administrator did not stay or dismiss the circuit court matter against Oxana and Namish following the mediation and entering into the Terms of Agreement. In their view, these actions constituted material misrepresentations that voided the Terms of Agreement. Finally, they argue that the Terms of Agreement is unconscionable because, by stripping Oxana, the sole legatee of the Will, of any bequest, it negates the decedent's testamentary intent and "centuries old precedents of holding a will sacrosanct."

The special administrator and Tina respond that the Terms of Agreement provided sufficient details and definite terms for the Orphans' Court to enforce it, and therefore, reformation was not required. Moreover, any actions that they took after appellants' sudden withdrawal from the Terms of Agreement were justified because appellants' actions created a need to protect their respective interests.

The interpretation of a contract, including the question of whether the language of a contract is ambiguous, is a question of law, which we review de novo. *See Towson v. Conte*, 384 Md. 68, 78 (2004). Based on our review, we perceive no ambiguity and

conclude that the May 3rd Order did not alter any material terms in the Terms of Agreement. Parole evidence was not introduced to explain or clarify the provisions of the Terms of Agreement, but was directed to its enforceability as a binding agreement.

The Terms of Agreement, in Paragraph 1, provides that disputed funds of the estate, including those in the court's registry, be paid to the special administrator for distribution of the estate. Hand-written annotations to Paragraph 6 of the document indicate that the value of the estate will be as "shown on final accounting." Paragraph 1 of the May 3rd Order provides, "The $1,140,000 (plus interest) presently held in the Registry of the Circuit Court . . . shall be released . . . to [the special administrator]."

The Terms of Agreement provides that "[w]ithin 10 days after the filing of the inventory . . . the Special Administrator will distribute 50% of the liquid assets on hand . . . 57% to Namish [and] 43% to Tina and Neela subject to their agreement," (Paragraph 3) and "[w]ithin 10 days of when an order approving the Special Administrator's final account has been approved and become final, the balance of the funds will be distributed 57% to Namish and 43% to Tina" (Paragraph 11). The May 3rd Order enforced those terms.[23]

[23] The May 3rd Order provides:

> 3. [The special administrator] shall, within 10 days of the Inventory, make partial distribution of fifty percent (50%) of the liquid assets on hand as provided in the [Terms of Agreement], to the respective interested persons in the percentage amount stated in the [Terms of Agreement].
>
> 11. [The special administrator] shall, within 10 days of approval of the Final Accounting, make the remaining distribution as provided in the [Terms of

Both the Terms of Agreement *and* the May 3rd Order, with slight rewording, contain the following terms:[24]

> 2. The special administrator shall file an inventory with the register of wills after receipt of the estate funds.
>
> 4. Oxana shall submit a signed accounting to the Orphans' Court.
>
> 5. All parties, except the estate and Neela, waive reimbursement of legal fees. The special administrator shall distribute $10,000 to Neela for attorney's fees.
>
> 7. The special administrator shall distribute $9,780 to Oxana for funeral expenses.
>
> 8. The special administrator shall distribute $10,991.69 to Oxana for expenses incurred by her.
>
> 10. The special administrator shall distribute $4,902.83 to Namish for expenses incurred by him.
>
> 12. The parties agree to general, mutual releases of each party by each party, effective upon final distribution, except as to Neela as provided.
>
> 13. Upon receipt of funds provided, Neela will cease to be an interested person in the estate and her release will be final.
>
> 15. All parties agree not to oppose vacating the North Carolina divorce of Dr. Parikh and Neela.
>
> 17. No party makes any representation or warranty as to the tax consequences of the agreement. Each party bears its own taxes.

Appellants point to several terms in the May 3rd Order that they contend constitute a major rewriting or alteration from the Term of Agreement. To be sure, a

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> Agreement] to the respective interested persons in the percentage amount stated in the [Terms of Agreement].

[24] The terms designated 1, 3, 6, 11, 9, 14, and 16 are discussed in more detail in the text of the opinion.

valid contract must "extend to all . . . material terms," but "[e]very possible term does not need to be included." *Falls Garden*, 441 Md. at 304-05. Among the "multitude of missing essential terms" in the Terms of Agreement alleged by appellants are: (1) the lack of full names of the parties; (2) the lack of a quantified amount of funds deposited in the court's registry; (3) terms concerning bonds to be paid to Oxana's minor son (Paragraph 9); (4) terms concerning the transfer of real property in India (Paragraph 14); and (5) terms concerning certain Duke Power stock (Paragraph 16).

Not only are the first two claims without merit, they border on frivolous. In short, everyone knew who was being referred to and that the amount of funds to be transferred was all the funds in the court's registry.[25] Moreover, appellants would be aware of the amount because the funds were deposited in the registry with their consent. We will address the latter three claims in greater detail.

Regarding the bonds, Paragraph 9 of the Terms of Agreement provided, "The proceeds from the sale of the savings bonds titled jointly with Tina ($10,640), Ashok Parikh ($10,640), Dipti Parikh ($10,640), and [Oxana's minor son] ($30,284.32) shall be paid to the joint owner at the same time distribution is made in Paragraph 3, provide [sic] a release is obtained from Ashok and Dipti and [Oxana's minor son]."[26] As Mr. Debelius testified, Paragraph 9 was contingent on Dr. Parikh's brothers, Ashok and Dipti, and Oxana's minor son signing releases allowing for the sale of the jointly titled savings

[25] The amount in the court's registry was $1.14 million plus interest.

[26] Paragraph 9 is entirely hand-written over typing, which has been crossed-out.

bonds. When it was learned after the mediation that Ashok and Dipti would not sign releases, according to Mr. Debelius, "paragraph 9 disappeared." Accordingly, the May 3rd Order provided: "[The special administrator] shall not provide payment to any joint bond holder, both because the precondition of release being obtained from Ashok, Dipti, and [Oxana's minor son] has not occurred, and because no related claims have been filed against the Estate within the six month limitations period." (Paragraph 9) As the stated condition for sale of savings bonds was not met, the Order provides that there will be no disbursements related to bonds. That was not a material alteration of the Terms of Agreement.

Regarding the real property in India, Paragraph 14 of the Terms of Agreement provided: "Neela will receive the condo in India and bank account in India. To the extent that any documents are necessary to effect this transfer, all parties will execute all documents necessary to accomplish the transfer . . . ." The May 3rd Order provided:

> [Oxana and Namish] are obligated to sign any and all documents reasonably necessary for the transfer to [Neela] of decedent's financial accounts in India and of the condominium in India (as referenced in the "Special Power of Attorney" . . .). Because payment of the cost of the transfer is not referenced in the Agreement, it is a reasonable inference that the Estate should pay directly or reimburse to [Neela] the cost of the conveyance, with [Neela] arranging the details and documents for the transfer.

Appellants contend that the real property is not adequately identified in the Terms of Agreement. Namish, however, testified that he was aware of only one condominium in India that his father had owned at the time of his death. According to Namish's testimony and the record, a power of attorney that was purportedly signed by Dr. Parikh

on June 11, 2016 (seven days before his death) transferred a piece of real property in India, which was identified by address, from Dr. Parikh to Namish. We are persuaded that the condominium (the only known condominium owned by Dr. Parikh in India and the one transferred to Namish by deed) was adequately identified in the Terms of Agreement. Nor are we persuaded that the Orphans' Court's determination that the estate should pay or reimburse Neela for the cost of the conveyance was an improper inference based on the Terms of Agreement or in any material way altered the Terms of Agreement.

Regarding the Duke Power stock, Paragraph 16 of the Terms of Agreement provided: "Tina will represent that she has no interest in any Duke Power stock. The Bonds stock which has passed to Tina's sons remain their property."[27] Appellants contend that Tina was obligated, under the Terms of Agreement, to renounce her interest in the Duke Power stock, but her post-mediation efforts to modify or exclude the stock from the settlement rendered the entire Terms of Agreement illusory and rescinded. During the post-mediation period, the special administrator determined that a certain amount of Duke Power stock was held by Dr. Parikh and Tina as joint tenants. According to testimony from the special administrator's attorney, Mr. Debelius, the Terms of Agreement "just said that Tina doesn't think there is any, or isn't aware of any stock, and later on we became aware of it." Mr. Debelius wrote in an email to Ms.

[27] We note that the word "Bonds" in the second sentence is hand-written over typed words "Duke Power," which has been crossed-out. This does not, in our view, create a material ambiguity.

Muffoletto, "Paul [Maloney]/Tina obviously need to state their position on the Duke Stock. I expect the answer is that Tina does not want to give up the stock, but they would need to formally state that position." But that was not the case; Tina did in fact renounce any interest in that stock by agreeing to convey all of it to the estate in accordance with the Terms of Agreement. The May 3rd Order provided, "Tina shall cause to be conveyed to the Estate all shares of stock (883.3229 shares as of 12/22/16) of Duke Energy Common stock . . . held in the name of [Dinesh Parikh and Tina Parikh-Smith, joint tenants]." (Paragraph 16) We perceive no material alteration of the Terms of Agreement related to stock in the May 3rd Order.

We hold that the Terms of Agreement is not ambiguous and that the May 3rd Order did not constitute an improper rewriting or reformation of the contract. We further hold that the legal actions that the special administrator, Tina, and Neela took to defend their respective stakes in Dr. Parikh's estate after Oxana and Namish's abrupt withdrawal from the anticipated settlement in February 2017 did not rescind, repudiate, or void the Terms of Agreement.

And, when viewed in light of the respective claims of the various parties, including the caveat and the alleged fraud, the Terms of Agreement is not unconscionable. "An unconscionable contract involves extreme unfairness, 'made evident by (1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party.'" *Barrie School v. Patch*, 401 Md. 497, 517 (2007) (quoting *Walther v. Sovereign Bank*, 386 Md. 412, 426 (2005)).

The parties who engage in mediation are free "to contract as they see fit," including to "define the governing terms . . . of their mediations by contract." *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 752 (2017). The Terms of Agreement was reached by the parties, who were represented by counsel, after two days of mediation. It manifests their mutual assent, the intention to be bound, and the definiteness of the material terms. The ultimate distribution of the estate benefits Dr. Parikh's children and his perceived spouse, usually considered the natural objects of one's estate.

Settlement usually involves weighing risks against possible rewards. Certainly, Namish, who received nothing under the Will and will receive 57% of the estate under the Terms of Agreement, cannot complain about the settlement. We do not know what agreement, if any, Oxana may have with Namish. But, her actions as Dr. Parikh's attorney-in-fact and personal representative had heavily favored Namish. They have joined together and shared counsel in the litigation and during the mediation. They continue to do so in the various appeals. That Oxana settled for her expenses does not mean that she lacked a meaningful choice or that the settlement was unconscionable.

4. Did the special administrator have authority to settle/compromise on behalf of Estate?

Appellants contend that the special administrator exceeded her authority because only a personal representative is authorized to "compromise for the benefit of the estate." They also contend that the special administrator had no authority to hire an attorney or law firm to sue the sole legatee of the estate and then settle the lawsuit. And, if the special administrator was to be considered a personal representative in this case, her duty

was to defend the Will and not negotiate a settlement that stripped the sole legatee of the Will, Oxana, of any bequest. In their view, the special administrator was unfairly prejudiced against them and favored Tina and Neela.

Appellees contend that the special administrator had statutory authority to protect the interests of the estate, creditors, and interested persons, and had standing to file litigation against Oxana and Namish to achieve those ends.

§ 6-403 of the Estates and Trusts Article ("ET") provides:

> A special administrator shall collect, manage, and preserve property and account to the personal representative upon his appointment. A special administrator shall assume all duties unperformed by a personal representative imposed under Title 7, Subtitles 2, 3, and 5 of this article, and has all powers necessary to collect, manage, and preserve property. In addition, a special administrator has the other powers designated from time to time by court order.

Md. Code Ann. (1974, 2017 Repl. Vol.).

Maryland Rule 6-454 also provides:

> (a) When necessary to protect property before the appointment and qualification of a personal representative or before the appointment of a successor personal representative following a vacancy in the position of personal representative, the court shall enter an order appointing a special administrator.
>
> * * *
>
> (d) The special administrator shall assume any unperformed duties required of a personal representative concerning the preparation and filing of inventories, accounts and notices of filing accounts, and proposed payments of fees and commissions. The special administrator shall collect, manage, and preserve property of the estate and shall account to the personal representative subsequently appointed. The special administrator shall have such further powers and duties as the court may order.

At the close of the September 9, 2016 hearing, the Orphans' Court appointed Boynton as the special administrator. It did so because it was concerned that Oxana had improperly transferred about $1.14 million in funds from Dr. Parikh to Namish using her 2014 power of attorney. And, when Tina's counsel requested that those gifted funds be deposited in the court's registry, Oxana's counsel argued that that decision was "within the purview" of the special administrator. The Orphans' Court agreed, stating: "All right, well we'll leave it to Ms. Boynton to deal with that." On October 6, 2016, the special administrator filed a complaint against Oxana and Namish in the Circuit Court for Montgomery County, seeking recovery of the funds transferred to Namish's possession. Those funds were later transferred by a consent order to the court's registry.

A special administrator is charged by statute and rule to "collect, manage, and preserve property" of the estate. In light of the caveat and the competing claims of Dr. Parikh's immediate family members, a special administrator would, in our view, have been remiss in not taking action to avoid further dissipation of the estate property. For the same reason, her participation in a mediation related to the estate property, for which she was responsible, was essential. Although the heavy lifting in negotiating who got what of the estate rested on the parties claiming a financial interest in it, the special administrator needed to ensure that what was agreed to meet the requirements of the law and the approval of the Orphans' Court.

5. *Did the Orphans' Court have jurisdiction to enforce/rewrite the [Terms of Agreement]?*

Appellants contend that the Orphans' Court did not have jurisdiction to enforce the Terms of Agreement because Tina was not an "interested person" in the estate under the purported Will. Therefore, they argue that she could not bring an action to seize funds that had been gifted to Namish.

We are persuaded that Tina had standing to seek enforcement of the Terms of Agreement because she is party to that agreement and the agreement she sought enforce bore directly on the administration of an estate of a deceased person. As Dr. Parikh's daughter and a potential heir, Tina achieved standing when she petitioned to caveat the Will. *See McIntyre v. Smyth*, 159 Md. App. 19, 34 (2004); *Sherman v. Robinson*, 319 Md. 445, 448 n.2 (1990). A petition to caveat a will "may be filed at any time prior to the expiration of six months following the first appointment of a personal representative under a will." ET § 5-207(a). When, as in this case, a petition to caveat is filed after administrative probate has begun, "it has the effect of a request for judicial probate." ET § 5-207(b).

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). The *Kaouris* Court explained:

> [I]ncidental to these powers, [the Orphans' Court] may have to interpret written documents. It is not, however, the fact that it interprets a particular document that determines whether it has fundamental jurisdiction; rather, it is the issue upon which the interpretation of the document bears that has that effect; that which is incidental does not divest the court of jurisdiction. Accordingly, once it is determined that the subject matter, incident to which a document must be construed, is within the jurisdiction of the orphans' court, that court is empowered to interpret that written document.
>
> * * *
>
> We hold that where it is incident to the fulfillment of the court's jurisdiction—in this case, the determination of the appellee's interest in the subject estate—the orphans' court may construe a marital settlement agreement, for the purpose of deciding whether the agreement is valid or void, including determining whether the parties have actually separated.

Id. at 709, 713.

The Orphans' Court heard Tina's motion to enforce the Terms of Agreement, pursuant to its express authority to conduct judicial probate and administer Dr. Parikh's estate, *see* ET § 2-102(a), and the authority to interpret the Terms of Agreement because it was incidental to that court's fundamental jurisdiction. *See Kaouris*, 324 Md. at 709. Based on its determination that the Terms of Agreement was a binding, enforceable contract, the May 3rd Order was a proper exercise of the court's jurisdiction to "pass orders which may be required in the course of the administration of an estate of a decedent." ET § 2-102(a).

We will now address, in turn, the First, the Fourth, and the Third Appeals. The determination that the Terms of Agreement was a binding agreement for settling Dr. Parikh's estate, effectively resolves the First Appeal (No. 1508) and the Fourth Appeal (No. 1226), both of which arose in the Orphans' Court during the administration of that estate. The Terms of Agreement does not reserve any past or future claims related to the

distribution of Dr. Parikh's estate and renders any such claims moot. That said, we recognize that appellants in their First (No. 1508) and Fourth Appeals (No. 1226) do not accept that conclusion. For that reason, we will address their contentions in those appeals. Doing so necessarily involves revisiting aspects of the Second Appeal, but we will tread as lightly over any previously ploughed ground as we can.

The First Appeal (No. 1508)

After the death of Dr. Parikh, Oxana filed the Will and a petition for a small estate administration on June 21, 2016 and, in accordance with the Will, she was appointed the personal representative of the estate. On July 11, 2016, Tina filed a petition to caveat the Will and to remove Oxana as the personal representative.[28] The hearing on the removal petition was held on September 9, 2016. The Orphans' Court granted the petition and the order appointing Boynton as the special administrator was entered on September 19, 2016.

Appellants first contend that Tina did not have standing to petition for Oxana's removal of the personal representative or the special administrator of the estate. That contention rests on the fact that Tina was, under ET § 1-101(i)(4)[29], no longer an interested person in the Will.

[28] Oxana's motion to consolidate the caveat and removal proceedings was denied.

[29] ET § 1-101 provides:

> (i) "Interested person" is:
> (1) A person named as executor in a will;

The special administrator responds that the petition to caveat automatically converted the initial administrative probate to judicial probate, and immediately terminated Oxana's role as personal representative and reduced her role to a special administrator. *See* ET §§ 5-207(b); 6-307.[30] And, although she was entitled to "special consideration," the decision to appoint a special administrator under such circumstances is within the discretion of the Orphans' Court. ET § 6-401[31]; *Carrick v. Henry*, 44 Md. App. 124, 131 (1979).

> (2) A person serving as personal representative after judicial or administrative probate;
> (3) A legatee in being, not fully paid, whether his interest is vested or contingent;
> (4) 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.

[30] ET § 6-307 provides:

> (a)(1) The appointment of a personal representative who has been appointed by administrative probate is terminated by a timely request for judicial probate.
>
> * * *
>
> (b) Subject to an order in the proceeding for judicial probate, a personal representative appointed previously has the powers and duties of a special administrator until the appointment of a personal representative in the judicial probate proceeding.

[31] ET § 6-401 provides:

> (a) Upon the filing of a petition by an interested party, a creditor, or the register, or upon the motion of the court, a special administrator may be appointed by the court whenever it is necessary to protect property prior to the appointment and qualification of a personal representative or upon the termination of appointment of a personal representative and prior to the appointment of a successor personal representative.

We agree with the special administrator. With the filing of the caveat, the issue before the Orphans' Court was not the removal of the personal representative under ET § 6-306 (that terminated under ET § 6-307(a)), but rather who should be appointed special administrator under ET §6-401. In the context of the case, we are not persuaded that the Orphans' Court abused its discretion in appointing a special administrator other than Oxana or any other family member.

Three of the remaining four questions in this appeal relate to the Orphans' Court's denial to transmit certain issues of fact to the circuit court under ET § 2-105.[32] But, any issues of fact related to the Orphans' Court's discretionary appointment of a special administrator are not issues "appropriate for transmittal." *Banashak v. Wittstadt*, 167 Md. App. 627, 692 (2006).

The fifth question, like the first, involves ET § 6-306 and the appropriateness of removing Oxana as personal representative for allegedly making certain material misrepresentations prior to her appointment and prior to the Orphans' Court proceedings. But, again, with the filing of the caveat, that question is moot as a matter of law. As we

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> (b) A suitable person may be appointed as a special administrator, but special consideration shall be given to persons who will or may be ultimately entitled to letters as personal representatives and are immediately available for appointment.

[32] Oxana submitted the following issues of fact:

1. Did the personal representative [Oxana] misrepresent to the Register of Wills that [Dr. Parikh] was single on June 18, 2016?
2. Did the personal representative [Oxana] mismanage property which belonged to [Neela]?

explained in *Carrick*, 44 Md. App. at 131, "no grounds for [her] removal were necessary."

To be sure, Oxana was entitled "special consideration" by the Orphans' Court in determining who should be the special administrator, but she was not entitled to that appointment as a matter of law. Based on our review of the hearing transcript and the Orphans' Court opinion, we perceive neither error nor abuse of discretion in the appointment of a special administrator other than Oxana or any family member in this case.

The Fourth Appeal (No. 1226)

The subject of this appeal arose after appellants filed their notice of appeal to the Orphans' Court's May 3, 2017 order granting Tina's motion to enforce the Terms of Agreement, which we affirmed in the Second Appeal. It is directed at the Orphans' Court's order of August 16, 2017, declaring three of Oxana's motions to be moot. Those motions were:

1. Emergency petition to strike and/or dismiss election to take statutory share of estate by a bigamous "wife";

2. Petition to Remove Special Administrator;

3. Motion to issue show cause order for hearing on April 25 and 26, 2017 on Petition to Remove Special Administrator.

Characterizing the August 16, 2017 order as having been issued *sua sponte*, appellants contend that the order enforced, modified, and/or altered the May 3rd Order in violation of Courts and Judicial Proceedings ("CJ") § 12-701(a)(1), which provides that "[a]n

appeal from an orphans' court or a circuit court stays all proceedings in the orphans' court concerning the issue appealed."[33]

At the time of the hearing on April 25-26, 2017, there were, by appellants' count, four petitions filed by Oxana pending; in addition to the three identified above, her petition to dismiss the caveat was also outstanding. The notice of the hearing, dated March 20, 2017, referred to five petitions or motions: (1) Oxana's motion to dismiss Tina's caveat; (2) the special administrator's petition to retain an expert on North Carolina law; (3) the special administrator's petition for further direction from the Orphans' Court; (4) Tina's motion to file the Terms of Agreement under seal; and (5) Tina's motion to enforce the Terms of Agreement. Additionally, five motions or petitions outstanding were not included on the notice: (6) Tina's caveat; (7) Neela's statutory election of a spousal share; (8) Oxana's petition to strike Neela's election; (9) Oxana's petition to remove the special administrator; and (10) Oxana's petition for a show cause order.

After expressly granting Tina's petition to enforce the Terms of Agreement and denying her motion to file it under seal, the Orphans' Court stated that "the other motions are moot." Appellants contend that, based on the hearing notice, that the only "other motions" to which the court's statement could apply were Oxana's motion to dismiss Tina's caveat, the special administrator's petition to retain an expert on North Carolina

[33] CJ § 12-701(a)(2) provides that "[a]n appeal from an orphans' court or a circuit court does not stay any proceedings in the orphans' court that do not concern the issue appealed, if the orphans' court can provide for conforming to the decision of the appellate court."

law, and the special administrator's petition for further direction from the Orphans' Court. Therefore, when the court later declared three of Oxana's other motions or petitions to be moot in the August 16, 2017 order, it violated the statutory stay by altering the May 3rd Order.

The special administrator responds that there was no violation of the statutory stay to enforce or modify an order on appeal. As she sees it, the August 16, 2017 order was in response to Oxana's Petition for Writ of Mandamus and/or Writ of Prohibition[34] and simply reduced to written form [the Orphans' Court's] earlier oral ruling from the bench. And, it concerned the issue on appeal only to the extent it "*restated* the prior conclusion of mootness" (emphasis in original) and therefore, was a proper exercise of the Orphans' Court's power to control the estate proceedings. On the other hand, if the prior ruling that "the other motions are moot" did not apply to the petitions that are the subject of this appeal, the August 16, 2017 order did not violate CJ § 12-701 because it did not concern the issue appealed. In either case, it was a proper exercise of the Orphans' Court's power to control estate proceedings and a proper response to appellant's efforts to obtain hearings on the petition, *i.e.*, there was no need for a hearing because the Terms of Agreement had rendered any motions or petitions moot.

[34] This Petition for Writ of Mandamus requests direction to the Orphans' Court to "offer Oxana a plenary hearing and/or to rule on her ripe motions/petitions," which were: (1) Oxana's petition to strike Neela's statutory share; (2) Oxana's petition to remove special administrator; and (3) Oxana's emergency motion to enforce automatic stay (filed June 30, 2017). As noted in footnote 13, *supra*, the Petition was denied.

Again, we agree with the special administrator. Under either the special administrator's understanding of the August 16, 2017 order or appellants', the result is the same. In short, the Orphans' Court's decision to grant Tina's motion to enforce the Terms of Agreement following the April 25-26, 2017 hearing rendered all the outstanding motions or petitions moot, including those specifically referenced in the hearing and those that were not.

The Third Appeal (No. 548)

We now leave the Orphans' Court and turn to the circuit court appeal. In that appeal, appellants ask the following questions:

1. Did [the special administrator] have standing to sue the sole-legatee to protect the interests of a bigamous 'wife,' non-existent trust, and a disinherited daughter; and did SA obtain valid judgments?

2. Did the circuit court improperly refuse to rule on [the special administrator's] motion to stay, which Appellants supported, in light of orphans' court order?

3. Was it proper to award damages prior to finding liability?

4. Were discovery sanctions proper; and, was it proper to deny Appellants' motion for protective order?

5. Were multiple motions to dismiss counterclaim improperly granted; and, was the declaratory judgment count of counterclaim improperly dismissed as moot?

6. Was [the special administrator's] motion for summary judgment properly granted; is there a stand-alone cause of action for breach of fiduciary duty; and, is there a stand-alone cause of action for accounting?

7. Was the prejudgment attachment of Appellants' personal bank accounts in a bank with no physical presence in Maryland proper?

8. Was [the special administrator's] motion to amend final appealable order properly granted; and, were Appellants entitled to a hearing?

The circuit court case began with the filing on October 6, 2016 by the special administrator of a civil complaint against Oxana and Namish, seeking recovery of funds of Dr. Parikh's estate that were liquidated or transferred by Oxana to Namish during the four months prior to Dr. Parikh's death. In that complaint, the special administrator sought a prejudgment attachment and an accounting (Count I), a constructive trust (Count II), along with claims of fraud (Count III), negligence (Count IV), trover and conversion - wrongful taking (Count V), unjust enrichment (Count VI), and civil conspiracy (Count VII). On November 17, 2016, $1.14 million was transferred into the circuit court's registry based on a consent order. Subsequently, Oxana and Namish filed a motion to dismiss the special administrator's complaint and filed an amended answer and a counterclaim.[35] On May 12, 2017, shortly after the May 3rd Order of the Orphans' Court, the circuit court held a hearing on all pending motions.

Standing of the Special Administrator

Analogizing the special administrator to a corporation that has forfeited its charter or an unlicensed collector, appellants first contend that the special administrator lacked standing or authority to initiate that action. In response, the special administrator points out that the Orphans' Court, with concerns regarding Oxana's prior transfer of over $1 million of Dr. Parikh's monies prior his death to Namish and her participation in an

[35] *See supra* footnote 12.

alleged "fraudulent divorce proceeding," removed Oxana as the special administrator.[36] And, at the end of the hearing on September 9, 2016, when Tina requested that the gifted money be paid into the court's registry, Oxana's counsel argued that that was a decision for the special administrator. To which, the Orphans' Court responded: "All right, well we'll leave it to Ms. Boynton to deal with that." The special administrator further contends that appellants did not object to her standing to file the complaint when she reported its filing to the Orphans' Court, five days after it was filed.[37] Nor did they at any time seek clarification from the Orphans' Court regarding the special administrator's authority to file the litigation.

As we understand appellants' standing argument, they essentially contend that the special administrator proceeded to file the complaint without an express order from the Orphans' Court to do so. Moreover, they argue that the special administrator had a duty to protect the assets of the estate for Oxana, who was the sole legatee, and therefore, she could not sue to protect the interests of Neela, Tina, a "non-existent trust for Dr. Parikh's grandchildren," and possible tax claims. They reject the legitimacy of any of those interests because they are contingent on multiple "if's": if Tina prevails on her caveat; if Neela is a legal wife; if there was a trust for the grandchildren; and if there are claims by the taxing authorities.

[36] As previously discussed, with the filing of Tina's caveat, Oxana ceased to be the personal representative and became a special administrator.

[37] The special administrator reported the filing and attached the complaint to her Petition to Require Accounting by Oxana, filed on October 11, 2016. Copies were served to Oxana, Mr. Wood, Esq., and Ms. Muffoletto, Esq.

In the absence of an agreement among the parties, many of these issues would need to be resolved. But, the Terms of Agreement did not reserve any of these claims, including, in our view, the appointment of the special administrator or her subsequent actions in the filing of the circuit court action. In fact, the Terms of Agreement and the agreed upon distribution of the estate's assets require that the funds received by the special administrator and deposited in the court's registry be part of that distribution. Therefore, the standing issue is moot.

We recognize, of course, that appellants reject the validity of the Terms of Agreement and are proceeding on their own contingency that it is not an enforceable agreement. But, were it not, appellants would fare no better on this issue. Our review of the transcript of the September 9, 2016 hearing, at which the special administrator was appointed, reveals Tina's request that any money of Dr. Parikh that Oxana was holding in her name or that had been "gifted" by her to Namish be deposited in the court's registry. It was the counsel for Oxana and Namish, who asserted that "decision is within the purview of whoever is the special administrator should they be able to continue to act with respect to whether or not those funds need to come back." The Orphans' Court agreed, "leav[ing] it to Ms. Boynton to deal with that." Its subsequent order gave the special administrator "all powers of administration that may be exercised attendant thereto," which included, under ET § 6-403, "all powers necessary to collect, manage, and preserve property."

Because she was not a personal representative, the special administrator did not have authority under ET § 7-401(y), related to the prosecution and defense of claims "for the protection or benefit of the estate." Clearly, however, the special administrator's complaint related to the collection of property for estate purposes. As Gibber on Estate Administration § 11.6 (6th ed. 2018) states, "A special administrator has the authority to bring an action in the Circuit Court for return of assets to the estate or to determine title to assets claimed to belong in the estate."

Here, the issue of Dr. Parikh's funds being transferred to Namish and the need for timely action to preserve those funds was squarely before the Orphans' Court, and it expressly stated that the special administrator was "to deal with that." Although it was not specifically referred to in an order, that statement, in our view, implicitly authorized the special administrator to take the steps she believed necessary and appropriate to preserve those funds. In addition, the special administrator reported the filing of the complaint on October 11, 2016, five days after the complaint was filed, with service on counsel for Oxana and Namish. Appellants never objected to or sought clarification in the Orphans' Court of the special administrator's authority to file suit in the circuit court.

In the circuit court, Oxana, in her partial answer to the verified complaint[38], stated under "negative defenses" that the special administrator's appointment was "reversible error as a matter of law" and that "the special administrator *will not retain* the legal authority to sue on behalf of the decedent" (emphasis added). And, in her partial answer

[38] She responded only to Count I (the accounting request). She filed a motion to dismiss the other counts.

under "affirmative defenses," her statement that the special administrator "lacks standing" in regard to Counts II-VII appears to be based on her assertion that she was the "sole interested person" in the estate under the Will and that she had acted lawfully at all times as Dr. Parikh's attorney-in-fact. Therefore, she should be the personal representative. We do not understand this to be a direct attack on the special administrator's standing to file suit, but rather an attack on the appointment of a special administrator.

In short, we are persuaded that the special administrator had standing to sue in this case.

Special Administrator's Motion to Stay

Appellants next argue that the circuit court "improperly" refused to rule on a motion to stay the proceedings that was filed by the special administrator on May 8, 2017 and consented to by the appellants.[39] The request for the stay was generated by Paragraph 12 of the Orphans' Court's May 3rd Order, which stated that "a STAY shall be sought" in the circuit court litigation "until final distribution" as otherwise provided in that Order. According to appellants, not ruling on the stay or denying it would be an abuse of discretion and reversible error.[40]

[39] Appellants consented to the stay, but opposed the transfer of funds in the court's registry to the special administrator, as required by the Orphans' Court's May 3rd Order.

[40] Appellants cite *Vaughn v. Vaughn*, 146 Md. App. 264 (2002), for the proposition that whether to grant or deny a stay is "a decision that requires the court to exercise its discretion, and failure to do so is itself error." In that case, which concerned a tort action and a pending divorce action, we held that the circuit court erred "in failing to exercise

The circuit court discussed the motion to stay at the hearing on May 12, 2017 when the issue was raised by appellants' counsel, who encouraged the circuit court to follow the Orphans' Court's lead. To counsel's statement that the Orphans' Court order "stays everything," the circuit court responded that the Orphans' Court could not order the "circuit court to stay," and further explained, "I am not inclined to give an indefinite stay. What you're asking me to do is basically stay this case for three to four years while you go . . . up and down to the Court of Special Appeals and Court of Appeals." Appellants acknowledge that the court was "putatively ruling" on the motion to stay. We agree. And, although not reflected in the docket entries, the circuit court clearly exercised its discretion to deny the motion to stay by proceeding to the merits of the other motions. We perceive neither error nor abuse of discretion.

Transfer or Award?

Appellants next contend that the circuit court awarded damages without finding liability. This contention relates to the transfer of the funds held in the court's registry to the special administrator, and also to the real properties in India and Florida and the credit that Namish received on the trade-in of Dr. Parikh's Toyota automobile.

The special administrator responds that the Orphans' Court's May 3rd Order indicated that the funds in the registry was to be paid to the special administrator for distribution of the estate, and the circuit court granted her motion to transfer those funds

discretion to decide whether to stay the tort action," pending the divorce action, but "[i]nstead . . . put the decision in [the husband's] hands." *Id.* at 280. We stated, "The decision whether to grant a stay was the court's . . . to make." *Id.*

based on the Orphans' Court order. In other words, the transfer was not an award of damages prior to a finding of liability. Moreover, and as previously discussed, the transfer of the disputed funds of the estate to the special administrator was expressly required by Paragraph 1 of the Terms of Agreement. Based on our review of the record and the court's order, we agree.

Discovery Sanctions

The special administrator filed, on April 13, 2017, a motion for sanctions for failure to provide discovery and default judgment. She alleged that Oxana and Namish failed to comply with court-ordered responses to interrogatories and production of documents, and sought dismissal of appellants' counterclaim and summary judgment in her favor on her complaint. On May 26, 2017, the circuit court granted the motion for sanctions.

Appellants contend that, in good faith, they subsequently did comply with the discovery requests and the sanction request was made without prior consultation with their counsel. They further contend that discovery sanctions and the denial of a protective order were improper. At the heart of this contention is the circuit court's statement "I know you could [make gifts], but why did you do it."[41] Appellants view that

[41] The complete statement of the court reads:

> [T]he failure in this case was substantial and not technical, almost exclusively and to a very large measure [Oxana's] discovery response to every question was ["]because I could["] . . . but the answer ["]I did it because I could["] is never a complete answer. People want to know, okay,

statement as a legal finding of Oxana's authority to make any gift that she, as Dr. Parikh's the attorney-in-fact, wanted to make, and therefore, "how much, to whom, or why were not justiciable issues." As we see it, appellants are reading more into the court's statement than they should.

The 2014 power of attorney does permit the attorney-in-fact to make gifts.[42] But, ordinarily, under North Carolina law, gifts, including gifts to the attorney-in-fact, are to be made "in accordance with the principal's personal history of making . . . lifetime gifts." N.C. Gen. Stat. 32A-14.1. For that reason, the appropriateness of particular gifts was a justiciable issue if the case went to trial, and the circumstances surrounding the gifts was a relevant inquiry.

The special administrator asserts that the discovery demands were the result of appellants unexpectedly "disavowing and abandoning the mediation agreement." Faced then with a pending discovery deadline, she filed interrogatories, a request for production of documents, and a videotape deposition. Appellants responded with the motion for a protective order challenging the special administrator's authority.

When the matter was before the circuit court and after hearing from the parties' counsels, the court, citing *Warehime v. Dell*, 124 Md. App. 31 (1998), found a "wholesale failure of discovery" and, in regard to the *Taliaferro* [*v. State*, 295 Md. 376

> I know you could, but why did you do it. Those were the questions that were asked, those were the questions that were not answered.

[42] The 2014 power of attorney states, in pertinent part: "I, Dinesh O. Parikh . . . constitute and appoint Oxana Parikh . . . to act as my Attorney-in-Fact . . . to make gifts . . . ."

(1983)] factors, found that the failure was "substantial and not technical," resulting in "substantial prejudice" if the special administrator had to go to trial "about the [real] property in India [and] Florida, [and] to a lesser extent about the Toyota." The court granted the motion for sanctions "as independent alternative grounds" for ordering summary judgment against Oxana and Namish on the special administrator's complaint discussed herein. We perceive neither error nor abuse of discretion.

Special Administrator's Motion to Dismiss Appellants' Counterclaim

In regard to the dismissal of appellants' counterclaim[43], appellants contend that the circuit court did not indicate that it assumed the truth of the facts alleged in the counterclaim and construed any inferences in their favor. The special administrator counters, with regard to Count I (Declaratory Judgement - Bigamous Marriage), that the court found, in light of the provision of the Terms of Agreement that "all parties [had agreed] not to oppose the vacating of the North Carolina divorce," the need for a declaratory judgment was moot. And, should the Orphans' Court's May 3rd Order be reversed, this matter could then be resolved in the Orphans' Court pursuant to Oxana's petition to strike Neela's election. We agree that dismissal of Count I was appropriate.

As to Count II (Abuse of Process), appellants contend that the special administrator's prejudgment attachments to their bank accounts at Ally Bank were illegal.

[43] Count I was dismissed as moot on May 15, 2017. Counts II, III, and IV as to the special administrator were dismissed on May 12, 2017; the counterclaim as it affected Tina was dismissed in a separate order on May 12, 2017; and as it affected Neela, Count IV was dismissed on May 26, 2017. *See supra* footnote 12.

They also argue that the bank accounts were not subject to a writ of attachment because Ally Bank is located in Pennsylvania and has no physical presence in Maryland.[44]

The special administrator, quoting *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 530 (2004), responds that abuse of process involves "the improper use of civil or criminal process in a manner not contemplated by law after it has been issued." Maryland Rule 1-202(w) defines "process" to mean "any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ."

The order appointing the special administrator was not process, and the special administrator's letter to Ally Bank asking it to freeze voluntarily the funds (which it did for several days) was not the use of the appointment order in an inappropriate way. The only process issued was based on Tina's request for subpoenas (including one for Ally Bank). Appellants did not allege monetary damages that resulted in the few days before there was a court order freezing the funds. And, when that occurred, it was agreed that the funds traceable to Dr. Parikh's estate would be deposited in the court's registry. In short, Count II failed as a matter of law.

As to Count III (Negligence and Breach of Fiduciary Duty), appellants allege that the special administrator breached her fiduciary duty to Dr. Parikh's estate by litigating to collect funds from Oxana and Namish, thereby incurring "substantial tax liability" for the

[44] The issue of the prejudgment attachment is the basis of appellants' Question No. 7 in the Third Appeal, and our discussion herein addresses that question.

estate and reducing what Oxana, the sole legatee, would receive.[45] The special administrator counters that Count III "failed to state a cause of action" because no facts were alleged which could constitute a breach of fiduciary duty or negligence on the special administrator's part. It is her view that, if Oxana and Namish believed that she had exceeded her authority or that she should investigate or pursue a certain matter, their remedy was to petition and seek further direction from the Orphans' Court. But, until then, it was her duty as special administrator was to collect and preserve assets for the benefit of creditors and potential beneficiaries of the estate.

A special administrator has a duty to all interested parties. And, if she were exercising her responsibilities inappropriately, that was an issue for the Orphans' Court. *See Wheatley v. Fleischmann*, 216 Md. 157, 162 (1958) ("There can be no doubt that the Orphans' Court, upon a proper showing of neglect [or] incompetence . . . may revoke an executor's letters testamentary and appoint another personal representative of the estate.") We are not persuaded that the actions complained of could constitute either negligence or breach of a fiduciary duty. And, as discussed earlier, we believe it would have been negligent and improper for the special administrator not to seek recovery of the funds.

As to Count IV (Civil Conspiracy), appellants theorize a conspiracy (without alleging specific facts) between the special administrator and Tina, featuring covert

[45] This is an interesting argument. Assuming if Oxana inherited under the Will, her share would be reduced by the 10% inheritance tax and estate expenses. But, by transferring essentially all of it to someone else, she effectively gives up 100% of her legacy, unless there is an agreement with the person to whom she made the gift that is beneficial to her.

communications before the September 9, 2016 hearing in furtherance of a plot to remove Oxana as personal representative, invalidate the Will, and distribute its assets in a way contrary to testamentary intent. The special administrator counters that Count IV failed because appellant alleged no fact that could constitute an unlawful act or unlawful means to accomplish an act not in itself illegal. In addition, the special administrator asserts that she had no information about the estate before her appointment at the September 9, 2016 hearing, which required her to investigate allegedly misappropriated funds and to take appropriate action. Nor did she take any action to invalidate the Will; the caveat was filed before her appointment. Therefore, she argues, there is no fact supporting a prior agreement between the special administrator and Tina or Neela.

A civil conspiracy requires "a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal" resulting in damages to the plaintiff. *Green v. Washington Suburban Sanitary Comm'n*, 259 Md. 206, 221 (1970); *see also* Md. Civil Pattern Jury Instructions 7:6 (5th ed. 2018). We agree with the special administrator and our discussion on her motion for summary judgment will further illuminate the failure of appellants' civil conspiracy claim against the special administrator.

Special Administrator's Motion for Summary Judgment

Appellants challenge the circuit court's May 26, 2017 order granting the special administrator's motion for summary judgment regarding Oxana's breach of fiduciary duties. Appellants return to the circuit court's statement about knowing that Oxana

"could [make gifts]," which, in their view, collapsed the "structured support" for the special administrator's motion for summary judgment. They argue that any findings that the gifts made by Oxana were improper would contradict Dr. Parikh's will. Essentially, appellants argue that material facts were at issue regarding the marriage of Neela and Dr. Parikh, the special administrator's authority, and Oxana's rights under the 2014 power of attorney and the Will. And, that references to an expert's report regarding Oxana's fiduciary duties were improper because that individual had not been qualified as an expert and was not present for oral testimony or cross-examination.[46]

In support of her motion for summary judgment filed on February 17, 2017, the special administrator argued that there was no genuine dispute regarding the core question: "Did [Oxana] as an attorney-in-fact . . . breach fiduciary duties to [Dr. Parikh] by depleting substantially all of his assets, shortly after her appointment, rendering [him] insolvent (against his financial best interests), in order to gift . . . all of his assets to [Namish,] a person disliked by [Dr. Parikh?]" Oxana and Namish opposed that motion, on March 6, 2017, countering that the 2014 power of attorney contained an express

[46] The special administrator's summary judgment motion contained an affidavit by Alfred L. Brophy, Esq., who is a professor of law at the University of North Carolina Law School. The special administrator elaborated that "[w]hile the law of North Carolina appears clear on its face, because of the incredible legal contentions being made by [appellants] (no fiduciary duties required of Oxana)," she sought to retain Professor Brophy as "an expert on North Carolina law regarding Oxana's powers and duties under the North Carolina power of attorney." Oxana, however, opposed retaining Professor Brophy as an expert, arguing that expert testimony was not necessary, was likely to confuse a jury, and the special administrator lacked authority to litigate in the first place. The record shows that the circuit court did not rely on Professor Brophy's affidavit in granting summary judgment, and in any event, there was no need for a trial upon the Orphans' Court's approval of the Terms of Agreement.

authority "to make gifts," that Neela's marriage to Dr. Parikh was bigamous, that Tina was "a usurper in the estate," and that the special administrator lacked the authority to sue. Replying to their opposition, the special administrator argued that that filing failed to dispute any of the key material facts stated in the summary judgment motion related to the improper transfer of funds. In other words, appellants did not dispute making gifts.

Maryland Rule 2-501(b) provides:

> A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

"[T]he mere existence of a scintilla of evidence in support of the [non-moving party's] claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the [non-movant]." *Butler v. S & S Partnership*, 435 Md. 635, 665-66 (2013). "General allegations are insufficient," and the non-movant must present facts in dispute "in detail and with precision." *Clark v. O'Malley*, 434 Md. 171, 195 (2013).

We are persuaded that appellants' opposition to the special administrator's motion for summary judgment failed to "identify with particularity each material fact as to which it is contended that there is a genuine dispute." Md. Rule 2-501(b). Appellants' contentions related to the 2014 power of attorney were not based on disputes of facts, but rather the application of the law to those facts.

The circuit court's order determined that "there is no genuine dispute of material fact regarding the issue of breach of fiduciary duties by Oxana," and ordered that "summary judgment be entered on Count 1 of the Complaint (Accounting) and that the $1.14 million (plus interest) . . . be paid to the estate of [Dr. Parikh]." We understand the circuit court's ruling to be based on its conclusion that Oxana improperly gifted about $1.14 million of Dr. Parikh's assets to Namish during the last months of his life. In doing so, it appears that the circuit court was relying on the Orphans' Court's September 9, 2016 finding that Oxana had acted fraudulently and made material misrepresentations.[47]

[47] At the close of the hearing, the Orphans' Court stated:

> So here there was evidence that [Oxana] had the power of attorney going back a couple years . . . [and] pretty clear evidence that . . . to the tune of over $1.1 million there were monies given to [Oxana's] ex-husband [Namish].
>
> * * *
>
> [T]o me the only logical inference that I draw is that she was basically just doing it to hide the money or to . . . essentially give it to herself through her ex-husband because otherwise it just doesn't make any sense. Particularly, if the decedent and the son were not on good terms.
>
> * * *
>
> Then you have the whole issue with the divorce in North Carolina . . . and the findings of fact [that Dr. Parikh and Neela] had lived separate and apart from each other since January 2015, that is for more than a year.
>
> Well, that is just absolutely false. [] There is no evidence of that. . . . And then of course you have the fact that [Oxana] knew that [Dr. Parikh] was not competent and under North Carolina [law] you can't have an incompetent person filing for a divorce.
>
> She does it anyway and of course just signs his name. So it's not as power of attorney. . . . Anyway that to me is a total fraud. So you've got basically a defrauding of the Court in North Carolina and basically giving yourself $1.1 million.

And, as previously discussed, the motion for discovery sanctions was granted "as independent alternative grounds" for the disbursal of funds to the estate.

The Amended Order

Finally, appellants argue that the circuit court's May 12, 2017 order was improperly amended after they had filed a notice of appeal. Appellants appealed that order on May 31, 2017. On June 2, 2017, the special administrator moved to amend the May 12, 2017 order, transferring of $1.14 million plus interest from the court's registry to the special administrator, based on a request by the Finance Department of the Circuit Court to add the language "minus administrative costs." This amendment was accepted by the circuit court on June 7, 2017, and in no material way did it affect appellants' appeal. We cannot definitively deduce the reason for the Finance Department's request, but it appears that the failure to allow for the administrative costs was an oversight in the nature of a clerical mistake. Because the court's revisory power is generally broad, in such instances, it "may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders." Md. Rule 2-535(d).

For the reasons stated above, we hold that the appellants' counterclaim was properly dismissed and the special administrator's motion for summary judgment was properly granted, based on the pleadings, and alternatively, as a sanction for discovery violations. Moreover, any error or abuse of discretion that might have occurred was rendered harmless by the Terms of Agreement.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY SITTING AS THE ORPHANS' COURT AFFIRMED.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

Appendix

Terms of Agreement—Estate of Dinesh Parikh

The parties hereto have agreed to the following terms of a settlement, which will be reduced to a writing, which writing will be submitted for the approval of the Orphans' Court for Montgomery County, Maryland. The following recitation is not binding until the full agreement is approved by the Orphans' Court.

1. All disputed funds will be paid over to Lynn Boynton, Special Administrator, including but not limited to funds currently in the registry of the court, all estate checking accounts, ~~the Manor Care refund~~, within 10 days of the approval of the agreement.

2. The Special Administrator will file an inventory with the Register of Wills as soon as practicable after receipt of the funds referenced in Paragraph 1, above.

3. Within 10 days after the filing of the inventory referenced in Paragraph 2, above, the Special Administrator will distribute 50% of the liquid assets on hand as provided herein:

   a. 57% to Namish

   b. 43% to Tina and Neela subject to their agreement

4. Oxana will comply with the extant court order by submitting a signed accounting, without exhibits, exhibits to be provided if required by the Register. Orphans' Court to Court to Lynn w/ exhibits

5. Each party pays its own fees, except that $10,000 will be paid to Neela for her fees at the same time as the payment in Paragraph 3.

6. For commission purposes, the parties agree that the Estate will be valued at ~~$1,400,000~~, to be paid upon approval of a petition for commission and fees. amt shown on final acct'g
   $10 legal fees separate fm commiss in

7. Oxana ~~Namish~~ will be submit and have paid a claim for funeral expenses in the amount of $9,780.

8. Oxana will submit and have paid a claim for advances and/or expenses advanced from her funds on Dinesh's behalf in the amount of $10,991.69.

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PETITIONER'S EXHIBIT #2

1318

9. The proceeds from the sale of the savings bonds titled jointly with Tina ($10,640) Ashok Parikh ($10,640), Dipti Parikh ($10,640), [redacted] ($30,284.32) shall be paid to the joint owner at the same time distribution is made in Paragraph 3, provide a release is obtained from Ashok and Dipti and Neil.

~~9. Oxana will submit and have paid a claim for $10,000 of her funds which she mistakenly deposited in Dinesh's account.~~

10. Namish will be entitled to submit and have paid a claim in the amount of $4,902.83.

11. Within 10 days of when an order approving the Special Administrator's final account has been approved and become final, the balance of the funds will be distributed 57% to Namish and 43% to Tina.

12. General, mutual releases of each party by each party, effective upon final distribution except as to Neela, as provided herein.

13. Upon receipt funds by Neela as contemplated in Paragraphs 3 & ~~4~~ 5, Neela will cease to be an interested person in the Estate and the releases by her and of her will be final. Neither the Estate nor any other person will have recourse to funds distributed to Neela for any claim or expense.

14. Neela will receive the condo in India and the bank account in India. To the extent any documents are necessary to effect this transfer, all parties will execute all documents necessary to accomplish the transfer in the way which minimizes costs, taxes and expenses.

15. All parties agree not to oppose the vacating of the North Carolina divorce. To the extent any paper has been filed in opposition, the party having filed it will withdraw it.

16. Tina will represent that she has no interest in any Duke Power stock. The ~~Duke Power~~ Bonds stock which has passed to Tina's sons remains their property.

17. No party makes any representation or warranty as to the tax consequences of the agreement; each party bears its own taxes.

for Neela Parikh

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SCANNED

1319