Circuit Court for Wicomico County
Case No. C-22-FM-22-000894

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1657

September Term, 2023

IN THE MATTER OF BETTY DAVIS

Graeff,
Nazarian,
Zic,

JJ.

Opinion by Graeff, J.

Filed: July 7, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This case arises from a dispute between Robert Russell Davis ("Russell") (and, after Russell's death, his son Robert Keith Davis ("Keith")),[1] the husband of Betty Davis ("Betty"), an adult disabled person, and Peggy Moore and Connie Lewis, the sisters of Betty Davis, over guardianship of Betty's person and property. In 2022, Russell filed a petition for guardianship in the Circuit Court for Wicomico County after Betty revoked the financial power of attorney she had given to him in 2018 and granted power of attorney to Ms. Moore and Ms. Lewis instead.

In addition to the grant of power of attorney to her sisters, Betty drafted in 2020 a new will, living will, and advance directive for health care. In 2023, Russell filed a motion to declare void *ab initio* the testamentary documents, asserting that Betty had been in cognitive decline for years and was not competent to execute legal documents at the time she created them. Ms. Moore and Ms. Lewis filed a motion for summary judgment, along with a physician's certificate and an affidavit by the attorney who drafted the testamentary documents, stating that Betty was competent at the time she executed them.

Following a hearing, the circuit court denied the motion to declare the will void because the question whether Betty was competent to execute it was not ripe for adjudication because she was still alive. The court granted Ms. Moore's and Ms. Lewis' motion for summary judgment with respect to the other documents, declaring that they were valid because Betty was competent at the time she executed the documents.

[1] Because several parties to this matter share the surname "Davis," we will refer to them by their given names (or, in the case of Robert Russell Davis and Robert Keith Davis, by their middle names) for clarity. We mean no disrespect in doing so.

In a timely appeal of the court's ruling and order,[2] Keith presents two issues[3] for this Court's review:

> 1. Did the circuit court err in declaring that the question whether Betty was competent to execute the will was not ripe because she was still alive?
>
> 2. Did the court err in granting summary judgment to Ms. Lewis and Ms. Moore and declaring that the 2020 Power of Attorney and Advance Directive were valid?

For the reasons set forth below, we shall dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

On October 25, 2022, Russell filed a petition for guardianship over the person and property of his wife, Betty, and a petition to require examination for disability, alleging that she was disabled and unable to make decisions for herself. In the petition, Russell alleged that he had lived with Betty, who suffered from, among other things, Alzheimer's Disease and dementia, in Maryland until March 2022, when he moved to North Carolina.

[2] On October 23, 2023, Keith noted his appeal from the circuit court's September 22, 2023 oral ruling granting summary judgment in favor of Ms. Moore and Ms. Lewis, although the court's written order and opinion was not docketed until November 28, 2023. We accept the notice of appeal as timely. *See* Maryland Rule 8-602(f) ("A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.").

[3] Keith presents the following question in his brief:

> Did the trial court err in granting the summary judgment motion of the Interested Parties, and in the declaration of rights of the parties, at the conclusion of the September 22, 2023 hearing and in its written opinion issued on November 22, 2023?

This question, however, breaks down into two different issues.

He believed that Betty was then living with one or both of her sisters, Ms. Moore or Ms. Lewis, in Maryland. Russell alleged that Betty had granted him financial power of attorney in 2018, but in December 2020, Betty executed a new will and a new power of attorney to Ms. Moore and Ms. Lewis without his knowledge.[4] The new will made each sister a beneficiary of Betty's estate in the amount of $50,000—although neither sister had been mentioned in any previous will—and made them co-executors of Betty's estate.[5]

Russell further alleged that Ms. Moore and Ms. Lewis had presented Betty as being of sound mind to various institutions, including banks, and had removed gold and silver coins belonging to him from a safe deposit box and placed them in a safe deposit box at another bank in the names of Betty and her sisters. In March 2022, Ms. Moore had "kidnapped" Betty, as he and his son Keith were preparing to move Betty to a home that Russell and Betty owned in North Carolina.

On January 11, 2023, Ms. Moore and Ms. Lewis, joined by Betty, through her attorney, filed a response to the petition to require examination for disability. Betty, through her attorney, filed a response to the guardianship petition, opposing guardianship. Ms. Moore and Ms. Lewis alleged that Betty and Russell had separated on March 15, 2022,

[4] Russell's power of attorney did not become effective unless and until Betty became disabled. Ms. Moore's and Ms. Lewis' power of attorney became effective immediately upon execution, which occurred on December 4, 2020.

[5] The will also bequeathed $25,000 to each of Betty's other two sisters, $50,000 and her interest in two homes in North Carolina to Keith, and $50,000 to Keith's son, Ryan Russell Davis, with the remainder of the estate to Russell. If Russell predeceased her, the residuary of her estate would be split equally between Keith and Ryan.

after the sisters informed Betty that Russell and Keith had acted against her best interest by removing money from her accounts without her knowledge or permission by use of a revoked power of attorney and without presenting to the bank any proof of Betty's disability, as required. On that day, when Ms. Moore went to Betty's house to bring Betty to her home, Keith physically restrained Betty in an attempt to keep her from leaving. Keith called the police. On March 16, 2022, Keith filed a protective order against Ms. Moore and Ms. Lewis, and on March 19, 2022, Betty filed a protective order against Keith. Ms. Moore and Ms. Lewis alleged that, since that time, Russell had not contacted Betty in any way, except to try to deliver to her a draft of a marital settlement agreement via his attorney.

Ms. Moore and Ms. Lewis alleged that Russell and Keith also had attempted to transfer funds from Betty's investment account in the amount of approximately $1.8 million to themselves using the revoked power of attorney. The investment company properly refused that transaction. Moreover, Russell and Keith had failed to provide Betty with the approximately $205,000 to which she was entitled from the sale of the marital home in Maryland, along with her personal property removed from the home.

Ms. Moore and Ms. Lewis sought to submit to the circuit court, for *in camera* review, Betty's medical records from neurologist Dr. Robert Paschall, concerning her ability to make legal decisions in December 2020, when she executed the testamentary documents in favor of her sisters.[6] Ms. Moore and Ms. Lewis alleged that their power of

[6] Dr. Paschall's records stated that, at a September 21, 2021 visit, he noted that Betty suffered from memory loss, which she was having trouble accepting, and obsessive

attorney and advanced medical directive provided a less restrictive alternative by which to handle Betty's financial and health care needs than guardianship.

On February 22, 2023, in the guardianship case, Russell filed a Motion to Declare Void Ab Initio a Will, Power of Attorney, Advance Directive and Living Will and Revocation of a Power of Attorney, alleging that Betty was incompetent to execute those documents. Russell alleged that Betty had been showing cognitive decline for 10 to 12 years, and the documents he sought to have declared void had been drafted behind his back, without his knowledge, and under the undue influence of Ms. Moore and Ms. Lewis.

On April 10, 2023, Ms. Moore and Ms. Lewis moved to dismiss the matter, noting that Russell had died on April 2, 2023. In response, Keith moved to substitute himself as petitioner.

Following an April 26, 2023 hearing, the circuit court appointed a temporary guardian over Betty's property and a temporary guardian over her person. A May 4, 2023,

thoughts. He diagnosed her as having "mild cognitive impairment with memory loss." At a December 2, 2021 follow-up visit, Dr. Paschall determined that Betty was competent to make financial decisions about her property and had the capacity to do so. He diagnosed her as having dementia with behavioral disturbance. At an April 5, 2022 follow-up visit, Betty made clear to the doctor that she wanted her sisters to handle her medical and financial decisions, and Dr. Paschall determined that she was "quite capable and has the capacity to make this decision." He diagnosed her as having "Lewy body dementia with behavioral disturbance." By December 12, 2022, Betty had shown "serious cognitive decline" and was living in the memory care center of an assisted living facility. Dr. Paschall noted in his Physician's Certificate that, following an April 17, 2023 evaluation, as of September 21, 2021, Betty had been capable of signing documents, retaining attorneys, and participating in legal proceedings, but she was no longer capable of doing so.

physician's certificate indicated that, at that point, Betty suffered from severe cognitive and memory loss and confusion and was no longer capable of participating in legal matters.

On July 20, 2023, Ms. Moore and Ms. Lewis filed a motion for summary judgment regarding the motion to declare void *ab initio* documents executed by Ms. Davis. They argued that: (1) pursuant to *In re Jacobson*, 256 Md. App 369 (2022), the validity of the will could not be challenged while Ms. Davis was alive; (2) the validity of the document revoking the 2018 power of attorney to Russell was moot because Russell had died; and (3) there was no genuine dispute of material fact that Ms. Davis was competent when she executed the December 4, 2020 documents. Ms. Moore and Ms. Lewis attached a physician's certificate to their motion, which certified that, on September 21, 2021, Ms. Davis was capable of signing documents, retaining legal counsel, and participating in legal proceedings. They also attached an affidavit from Ms. Davis' attorney, Chad R. Lingenfelder, who prepared the December 4, 2020 documents. Mr. Lingenfelder stated that, based on Ms. Davis' answers to his questions and her demeanor during their interaction, he concluded that "she was able to understand the substance and legal effect of the documents which were then reviewed with her in detail to confirm her agreement with all of the provisions of same."

On August 19, 2023, Keith filed an Answer to Motion for Summary [sic] and an Answer to Lewis' and Moore's Declaration for Judgment. He asserted that the validity of the will could be challenged prior to Ms. Davis' death, and Ms. Moore and Ms. Lewis

exerted undue influence and fraud "regarding the preparation" of the documents at issue in the case.

On August 28, 2023, Ms. Moore and Ms. Lewis filed a reply. They alleged that the validity of the will was not subject to challenge during Ms. Davis' lifetime, Keith's response did not establish a genuine issue of material fact "sufficient to oppose" their motion for summary judgment, the validity of the revocation was moot, and the newly asserted claim regarding undue influence and fraud was limited to the issue of the validity of the will, which could not be adjudicated prior to Ms. Davis' death.

On September 22, 2023, the circuit court held a hearing. Ms. Moore and Ms. Lewis argued that, pursuant to *In Re Jacobson*, a person challenging a will prior to the testator's passing has no "standing to do so because the matter is not ripe until the Testator passes," and at the time of the hearing, Ms. Davis had not passed. They asserted that the physician's certificate and affidavit of Mr. Lingenfelder established that there was no material dispute "as to whether or not Ms. Davis had capacity in December 2020 to execute those documents," and no contradictory affidavit was filed to dispute those facts.

Keith argued that the Will could be challenged at any time "because the code section" did not state that "the exclusive way to challenge" a will was after death. He stated that he planned to present evidence that Ms. Davis "had been hallucinating," "seeing her dead mother," and "believed that her dead brother was living in the house with her," and an expert was going to "testify about the competency and undue influence that was presented on Ms. Davis."

The court found that, based on the motions before it, there was no material fact in dispute, and Ms. Lewis and Ms. Moore were entitled to judgment as a matter of law. It found that a will "may not be legally challenged prior to the death of the testator," and therefore, the issue of the validity of Ms. Davis' will was not ripe for the court's determination. The claim regarding the validity of the revocation was moot, given Russell's death, and no genuine dispute of material fact existed with respect to Ms. Davis' competency to execute the additional legal documents at issue. The court stated that it would "issue a declaratory judgment in this case granting summary judgment," and because the judgment was declaratory, "that fully resolves all matters between the parties at least with regards to these documents." It noted that the case would proceed, however, with the guardianship proceeding, with a hearing to be held on October 24, 2023.[7]

This appeal followed.

DISCUSSION

Keith contends that the court erred in two regards. First, he asserts that the court erred in denying his motion to declare the will void because the issue regarding its validity was not ripe for adjudication. Second, he argues that the court erred in granting summary

[7] Following that hearing, the court appointed Paula Erdie, "in her capacity as Executive Director of MAC, Inc.," as guardian of the person of Betty, and Barrett King, Esq., as guardian of the property of Betty. On January 5, 2024, the court issued an order appointing these persons guardians of Betty's person and property. Betty died on June 11, 2024. On July 3, 2024, Keith filed a second notice of appeal, appealing the court's June 11, 2024, order denying Keith's motions for new trial filed on December 4, 2023, and January 19, 2024, and his Motion for Revised Judgment filed on January 19, 2024. That appeal is docketed as *In the Matter of Betty Davis*, No. 889, September Term 2024, and remains pending.

judgment on his challenge to the validity of the power of attorney and advanced medical directive.

A preliminary issue must be resolved first, *i.e.*, whether this is an appealable judgment. "This Court does not acquire jurisdiction over an appeal unless it is taken from a final judgment or from an interlocutory order that falls within one of the exceptions to the final judgment requirement." *Bartenfelder v. Bartenfelder*, 248 Md. App. 213, 229, *cert. denied*, 472 Md. 5 (2021). There are three exceptions to the general rule that a party can appeal only from a final judgment. These exceptions are as follows: (1) an appeal from an interlocutory order specifically authorized by a statute; (2) an appeal from an interlocutory order that falls under the collateral order doctrine; and (3) an appeal permitted under Maryland Rule 2-602. *In re C.E.*, 456 Md. 209, 221 (2017). *Accord* Judge Kevin F. Arthur, Finality of Judgments and Other Appellate Trigger Issues 52 (4th ed. 2025).

Here, because the petition for guardianship was still pending when the order on appeal was issued, Keith acknowledges that this is an interlocutory appeal. He argues, however, that it is appealable pursuant to Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 12-303(3)(vi) (2024 Supp.), which provides that a party may take an interlocutory appeal from an order "[d]etermining a question of right between the parties and directing an account to be stated on principle of such determination." As appellees note, however, the order here did not direct "an account to be stated on the principle of such determination." In *Lewis v. Lewis*, 290 Md. 175, 182-83 (1981), the Supreme Court of Maryland held that, in this situation, CJ § 12-303(3)(vi) "obviously" does not apply. *See* Arthur, *supra*, at 99, § 53.

The order here is not an appealable order pursuant to CJ § 12-303(3)(vi), and we shall dismiss the appeal.

Dismissal of the appeal regarding the validity of the power of attorney and the advance directive is warranted for an additional reason, *i.e.*, subsequent events have rendered the appeal moot. A case or issue is moot when "past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect." *Sugarloaf All., Inc. v. Frederick Cnty.*, 265 Md. App. 199, 227 (2025) (quoting *La Valle v. La Valle*, 432 Md. 343, 351 (2013)). *See also Tempel v. Murphy*, 202 Md. App. 1, 16 (2011) ("The test for mootness is whether a case presents a controversy between the parties for which the court can fashion an effective remedy."). "A question presented on appeal is moot 'if, at the time it is before the court, there is no longer any existing controversy between the parties, so that there is no longer an effective remedy which the court can provide.'" *Sugarloaf All., Inc.*, 265 Md. App. at 227 (quoting *Syed v. Lee*, 488 Md. 537, 578 (2024)).[8]

Here, the record reflects that Betty died on June 11, 2024. Therefore, any issue relating to the validity of her living will, advance directive, and financial power of attorney

[8] There are several situations, however, where an issue that may appear to be moot need not be dismissed under the mootness doctrine, such as where a situation is an issue of public concern. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 352 (2019). *Accord Trusted Sci. & Tech., Inc. v. Evancich*, 262 Md. App. 621, 641-43, *cert. denied*, 489 Md. 253 (2024). With respect to the public concern exception, "we must be persuaded that there exists an 'urgency of establishing a rule of future conduct in matters of important public concern' which 'is both imperative and manifest.'" *Green v. Nassif*, 401 Md. 649, 656 (2007) (quoting *Hagerstown Reprod. Health Servs. v. Fritz*, 295 Md. 268, 272 (1983)). We conclude that that none of the exceptions to the mootness doctrine apply here.

is moot. These documents are no longer in controversy. *See* Md. Code Ann., Est. & Trusts ("ET") § 17-112(a)(1) (2022 Repl. Vol.) (a power of attorney terminates upon the principal's death). *Accord Rosebrock v. E. Shore Emergency Physicians*, *LLC*, 221 Md. App. 1, 12 (pursuant to "well-established principles of agency law, an agent's authority terminates upon the death of the principal") (quoting *Brantley v. Fallston Gen. Hosp. Inc.*, 333 Md. 507, 511 (1994)), *cert. denied*, 442 Md. 517 (2015). Accordingly, there is no effective remedy we could grant relating to this issue.[9]

APPEAL DISMISSED AS MOOT. COSTS TO BE PAID BY APPELLANT.

[9] We do note, however, that with respect to the circuit court's ruling that the validity of the will was not ripe for adjudication because Betty was alive, if this issue was properly before us, we would affirm the court's decision based on our ruling in *Matter of Jacobson*, 256 Md. App. 369, 395 (2022), that a will "operates only upon and by reason of the maker's death," and because a will creates no present interest, a living person does not have heirs nor legatees, a court does not have "power to determine the validity of a will prior to the death of the maker.'" *Id.* (first quoting *In re Radda*, 955 N.W.2d 203, 212 (Iowa 2021); and then quoting *Cowan v. Cowan*, 254 S.W.2d 862, 864 (Tex. Civ. App. 1952)). In *Jacobson*, we held that Ms. Jacobson's daughter could not bring a pre-mortem contest to her mother's will, as she had no standing other than a remote claim as a presumptive heir. *Id*. at 397.