

Orphans' Court for Harford County  
Estate No. 50791

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1958

September Term, 2019

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JOSEPH G. RAYMAN, III

V.

WAYNE D. RAYMAN

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Berger,  
Shaw Geter,  
Eyler, Deborah S.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: December 18, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case is before us on appeal from an order of the Circuit Court for Harford County, sitting as the Orphans' Court for Harford County, denying a Petition for Removal of Personal Representative. Appellant Joseph Rayman, III ("Joseph") moved to remove Wayne Rayman ("Wayne") as the personal representative and resident agent of the Estate of Mary S. Rayman ("Mary").<sup>1</sup> Joseph further sought to have himself appointed personal representative. The Orphans' Court denied Joseph's petition as untimely. The narrow issue before us on appeal is whether the Orphans' Court erred by determining that Joseph's petition to remove Wayne as personal representative was untimely. For the reasons we shall explain, we shall vacate the order of the Orphans' Court and remand for further proceedings consistent with this opinion.

### **FACTS AND PROCEEDINGS**

The facts relevant to the narrow issue before us on appeal are undisputed. Mary was Joseph's grandmother and Wayne's mother. Wayne is Joseph's uncle and the brother of Joseph's late father, Joseph Rayman, Jr.

On or about January 23, 1980, Mary executed a will (the "1980 Will"). The 1980 Will appointed Mary's husband, Joseph Rayman, Sr., as personal representative. The 1980 Will provided that if Joseph Rayman, Sr., predeceased Mary, Joseph Rayman, Jr., and Wayne would serve as personal representatives. Joseph Rayman, Sr., predeceased Mary; he died in approximately 1987.

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<sup>1</sup> In the interest of clarity, we shall refer to the parties and the decedent by their first names. We intend no disrespect.

In 2004, Mary executed a new will (the “2004 Will”). The 2004 Will revoked all wills and codicils previously made and appointed Joseph Rayman, Jr., personal representative. The 2004 Will further provided that if Joseph Rayman, Jr., were “unable or unwilling to serve,” Wayne was appointed personal representative. Joseph Rayman, Jr., died in 2006.

On or about February 21, 2014, Mary signed a codicil (the “2014 Codicil”) to the 2004 Will. In the 2014 Codicil, Mary expressed that she “desired to add an additional provision to the” 2004 Will. The 2014 Codicil provided that the 2004 Will was “amended to add the following provisions,” specifically:

Section 3.2: **Personal Representative(s)**: I hereby appoint my grandson, *JOSEPH G RAYMAN III*, Personal representative of this Will. If my grandson *Joseph G Rayman III* is unable or unwilling to serve, this I [sic] hereby appoint WAYNE D. RAYMAN Personal Representative of this Will.

The 2014 Codicil was accompanied by a testation clause and was signed by two witnesses.

Mary died on April 14, 2014. On December 2, 2016, Wayne filed a Small Estate Petition for Administration along with a photocopy of the 1980 Will with the Harford County Register of Wills. In the petition, Wayne asserted that he was entitled to appointment as personal representative because he was Mary’s “only living child.” The petition provided that if there was an original will, “it is in the possession of others.” The petition requested that “the will and codicils, if any, be admitted to judicial probate.” The petition included a notation that there was another pending proceeding “regarding the decedent or the estate,” specifically the case of *Wayne D. Rayman v. Joseph G Rayman III*,

C-15-2592, which was pending in the Circuit Court for Harford County at the time (the “civil case”).<sup>2</sup> In the civil case, Wayne brought suit against Joseph individually and as trustee of the Mary S. Rayman Revocable Trust and alleged mismanagement of the trust’s assets. The inventory attached to the estate petition specifically stated that there were “no current assets known” and the estate was being opened for the purposes of “litigation only.”

On December 5, 2016, the Register of Wills entered an Order for Small Estate naming Wayne as personal representative. The order did not expressly admit the 1980 Will (or any other will) to probate. The form order provided:

The will dated January 23, 1980 (including codicils, if any, dated \_\_\_\_\_) accompanying the petition is:

- admitted to probate; or
- retained on file only.

There does not appear to be in the record any order admitting the 1980 Will to probate.

On January 6, 2017, Wayne filed photocopies of the 2004 Will and the 2014 Codicil that named Joseph the personal representative. Wayne did not file an amended Small Estate Petition, nor did Wayne submit an Information Report at that time.<sup>3</sup> On October 10, 2018, Wayne filed an Amended Regular Estate Petition for Administration with the Register of Wills. Wayne again asserted that he was entitled to priority of appointment as

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<sup>2</sup> The civil case is now pending on appeal before this Court. *Joseph G Rayman III v. Wayne D. Rayman*, No. 48, Sept. Term 2019. Oral argument was held on June 17, 2020.

<sup>3</sup> Wayne explains that he was unable to provide an Information Report because the necessary information was contained in documents that Joseph refused to provide during discovery in the civil case. After the conclusion of the civil case, Wayne filed an Information Report on February 11, 2019.

personal representative as Mary's only living child. The Petition requested that the will and codicils, if any, be admitted to judicial probate. An attached inventory provided that the estate had \$400,000.00 in assets.

On October 16, 2018, the Deputy Register of Wills sent a letter to Wayne's attorney advising that in order to convert the estate from a small estate to a regular estate, "you will need to file all the appropriate paperwork." Specifically, the Deputy Register of Wills explained that Wayne needed to "provide a Petition to Admit a Photocopy of both the Will and Codicil, among with consents and an Order for the Judge." The Deputy Register of Wills further asked for "the List of Interested persons, Resident agent form and a nominal bond" and advised that "consent to appointment of a Personal representative may be required." The Deputy Register of Wills also requested that Wayne file a corrected estate inventory.

On October 22, 2018, Joseph filed the Petition for Removal of Personal Representative that is at issue in this appeal. In the petition, Joseph alleged that Wayne misrepresented to the Register of Wills his priority to become personal representative. Joseph further asserted that Wayne's actions in connection with the civil suit had "improperly and unlawfully cause[ed] tens of thousands of dollars in damages to the Estate" and that Wayne was "incapable of discharging his duties and powers effectively." On the same date, Joseph also filed the original 2004 Will, and, on October 30, 2018, Joseph filed the original October 2014 Codicil. Wayne did not file a response to Joseph's petition.

Before any action was taken on Joseph's petition, the Register of Wills issued a show cause order on January 24, 2019 due to Wayne's failure to file an information report. After Wayne submitted an information report on February 8, 2019, the show cause hearing was canceled.

A hearing was held on October 17, 2019 on Joseph's petition to remove Wayne as personal representative. At the hearing, the court observed that the narrow issue before it was whether Wayne was entitled to serve as personal representative and whether Joseph should be appointed personal representative consistent with the 2014 Codicil. Counsel for Wayne argued that "[i]f [Joseph] had a problem with Wayne Rayman being named in the estate in December of [20]16, they had six months to raise the issue." Counsel for Wayne characterized the issue as a challenge of the "the [o]riginal will with its designation of Wayne Rayman as the personal representative." Counsel for Wayne asserted that Rule 6-431, governing timing for filing a caveat proceeding and providing that "a petition to caveat shall be filed within six months after the first appointment of the personal representative," precluded Joseph's challenge. The orphans' court agreed that Rule 6-431 was applicable and ruled that Joseph "had an obligation to come forward within that six month period to, in fact, assert his right to serve as the personal representative under the estate." Accordingly, the court denied Joseph's petition.

### **DISCUSSION**

When denying Joseph's petition to remove Wayne as personal representative, the orphans' court focused on the time requirement for the filing of a caveat petition set forth

in Maryland Rule 6-431. On appeal, Joseph asserts that the orphans' court erred by applying the time for filing requirement set forth in Maryland Rule 6-431. Joseph contends that Rule 6-431 is inapplicable to his petition because it was not a petition to caveat. As we shall explain, we agree with Joseph.

Wayne asserts that the orphans' court's determination that Joseph was required to file his petition for removal within six months of the initial appointment of Wayne as personal representative was a finding of fact for which we should apply the clearly erroneous standard of review. We disagree. The trial court's interpretation of Rule 6-431 and its applicability to the petition at issue in this case is an issue of law that we review without deference. *Green v. Nelson*, 227 Md. App. 698, 707 (2016). ("We review a court's interpretation of statutory provisions *de novo*.").

Maryland Rule 6-431(a) provides that "[a] petition to caveat may be filed by an heir of the decedent or a legatee in any instrument purporting to be a will or codicil of the decedent." "The petition may challenge the validity of any instrument purporting to be the decedent's will or codicil, whether or not offered for or admitted to probate." *Id.* Maryland Rule 6-431(b) governs the time for filing a caveat petition and provides as follows:

- (1) Except as otherwise provided by this Rule, a petition to caveat shall be filed within six months after the first appointment of a personal representative under a will, even if there has been a subsequent judicial probate or appointment of a personal representative under that will. If another will or codicil is subsequently offered for probate, a petition to caveat that will or codicil shall be filed within three months after that will or codicil is admitted to probate or within six months after the first appointment of a personal representative under the first probated will, whichever is later.

(2) Upon petition filed within 18 months after the death of the decedent, a person entitled to file a petition to caveat may request an extension of time for filing the petition to caveat on the grounds that the person did not have actual or statutory notice of the relevant probate proceedings, or that there was fraud, material mistake, or substantial irregularity in those proceedings. If the court so finds, it may grant an extension.

The orphans' court applied the Rule 6-431(b) time requirement for filing a caveat petition to the petition for removal of personal representative filed in this case. Because Joseph's petition was filed more than six months after the first appointment of a personal representative, the orphans' court denied the petition without addressing the merits.

The term "caveat" is not defined by statute, but the meaning of the term is well-established under Maryland law. Maryland law provides an interested party with "mechanisms to contest the will if that party believes that the will was not properly executed or that the will was procured by undue influence, fraud, or duress." *Shealer v. Straka*, 459 Md. 68, 82 (2018) (citing *Green, supra*, 227 Md. App. at 709). The mechanism by which an interested party can raise a challenge to the validity of a will is by filing a petition to caveat. *Id.* ("Specifically, an interested party can file a petition to caveat contesting the validity of the will submitted to probate.") (citing *Green, supra*, 227 Md. App. at 709; Md. Rule 6-431). "[I]f an interested person suspects that a will was not, in fact, executed, or was procured by fraud, duress, or undue influence, he or she may contest the validity of the will by filing a petition to caveat." *Green, supra*, 227 Md. App. at 708-09.



In the present case, Joseph did not allege that the will was procured by fraud, duress, or undue influence. Rather, Joseph's petition was a much more limited challenge seeking the removal of Wayne as personal representative. Indeed, Joseph did not challenge the validity of the will that Wayne had submitted to probate. Instead, Joseph alleged that Wayne had misrepresented that he was entitled to priority of appointment as personal representative and that Joseph was entitled to be appointed personal representative pursuant to the 2014 Codicil.

Separate and apart from Maryland Rule 6-431, there is a different rule governing the removal of a personal representative. Maryland Rule 6-452 is titled "Removal of a Personal Representative" and provides that "[t]he removal of a personal representative may be initiated by the court or the register, or on petition of an interested person." Md. Rule 6-452(a). Maryland Rule 6-452(b) further provides the procedure by which a court shall issue a show cause order and "conduct a hearing for the purpose of determining whether the personal representative should be removed."<sup>4</sup> Maryland Rule 6-452 does not include any provision requiring that a petition for removal be filed within a particular timeframe.

Section 6-306 of the Estates and Trusts Article sets forth the grounds for removal of a personal representative and similarly includes no specific time limitation. Md. Code (1974, 2017 Repl. Vol.), § 6-306 of the Estates and Trusts Article ("ET"). The statute provides:

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<sup>4</sup> Maryland Rule 6-452(b) cross-references Rule 6-124, which sets forth requirements for show cause orders.

(a) A personal representative shall be removed from office on a finding by the court that the personal representative:

- (1) Misrepresented material facts in the proceedings leading to the personal representative's appointment;
- (2) Willfully disregarded an order of the court;
- (3) Is unable or incapable, with or without the personal representative's own fault, to discharge the personal representative's duties and powers effectively;
- (4) Has mismanaged property;
- (5) Has failed to maintain on file with the register a currently effective designation of an appropriate local agent for service of process as described in § 5-105(c)(6) of this article; or
- (6) Has failed, without reasonable excuse, to perform a material duty pertaining to the office.

ET § 6-306(a). The statute further provides that “[e]ven if there exists cause for removal for failure to perform a material duty pertaining to the office, the court may continue the personal representative in office if it finds that continuance would be in the best interests of the estate and would not adversely affect the rights of interested persons or creditors.”

ET § 6-306(b). The statute requires that a hearing be conducted prior to the removal of a personal representative and provides that such a hearing “may be held:

- (i) On the motion of the court;
- (ii) On the motion of the register; or
- (iii) On the written petition of an interested person.”

ET § 6-306(c). Notably, the General Assembly chose to include an express deadline for the filing of a caveat petition but nonetheless declined to impose a similar deadline for the filing of a petition for removal of personal representative by an interested person.

Joseph points us to two cases in which Maryland courts were presented with and ruled upon petitions for removal of a personal representative years after the personal representative was appointed.<sup>5</sup> In *Hartford Fire Insurance Co. v. Estate of Sanders*, 232 Md. App. 24 (2017), a petition for the removal of a co-personal representative was filed eight years after the appointment. We observed that “the orphans’ court granted the petition” but “[t]he record [did] not reveal the basis for [the] removal.” *Id.* at 29. Joseph further directs our attention to *Ferguson v. Cramer*, 349 Md. 760, 773 (1998) (observing that a petition for removal pursuant to ET § 6-306 would be available three years after the appointment of personal representative on the basis that the personal representative was “unable or incapable of discharging his or her duties and powers effectively, or ‘has failed, without reasonable excuse, to perform a material duty pertaining to the office.’”).

Based upon our review of the relevant Maryland authority, we hold that the orphans’ court erred by determining that Joseph was required to file his petition for removal of Wayne as personal representative within six months of Wayne’s appointment. Accordingly, we hold that the orphans’ court erred by denying Joseph’s petition as untimely. We note that we take no position whatsoever as to whether Joseph’s petition

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<sup>5</sup> Neither of these cases directly addresses the applicability of Maryland Rule 6-431(b) to a petition for removal, nor did either case involve a challenge to a petition for removal of personal representative on the grounds that the petition was not timely filed.

should or should not have been granted as to the merits. This issue was not decided by the trial court and we shall not address it in the first instance on appeal. We, therefore, shall remand this case to the Orphans' Court for Harford County for further proceedings consistent with this opinion.

**JUDGMENT OF THE ORPHANS' COURT  
FOR HARFORD COUNTY VACATED.  
CASE REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION. APPELLEE TO PAY  
COSTS.**