UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2667

September Term, 2014

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IN RE:

ESTATE OF VIOLA BERNICE BAKER

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Meredith,
Nazarian,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: February 11, 2016

This case comes to us on an unusual posture: the appellant, Robert Baker, seemingly agreed through his counsel to a consent order entered into at a hearing before the Orphan's Court for St. Mary's County. He claims now, though, that he did not consent to the terms. Although his brief purports to raise numerous factual disputes about what took place during and after the hearing, he gives us no legal basis on which to overturn what the transcript reveals to be a straightforward agreement, and so we affirm.

## I. BACKGROUND

Viola Baker ("Mother") died intestate on December 7, 2013. Her son, Robert L. Baker, was appointed personal representative of the estate in the Circuit Court for St. Mary's County.[1] In the course of administering the estate, disputes arose about Robert's conveyance of Mother's house, during her lifetime, from joint ownership with him and Mother as tenants in common, to himself individually and Mother, as joint tenants with rights of survivorship. Put another way, Robert had conveyed the property effectively to carve it out of the estate's reach. But on April 21, 2014, the court set that transfer aside as beyond his then-authority as Mother's guardian, and required him either to transfer the property back to the two of them as tenants in common, or to sell the property and distribute

[1] We will refer to him as Robert, and to Mother's other children, who all were interested persons in the estate, by their first names as well; they include Joseph Baker III, Rebecca Baker, and Cynthia Baker.

the proceeds among Mother's heirs, as if the property had remained with the two of them as tenants in common.[2]

Robert's administration of the estate caused dissent among the siblings, and on September 22, 2014, Joseph filed a Petition for Removal of Personal Representative and Appointment of a Disinterested Third Party Personal Representative. He claimed that Robert had ignored the court's April 21, 2014 Order to restore the property to its former status, made general allegations of mismanagement and misrepresentations by Robert, and argued that Robert was unable to discharge the duties required of him as personal representative. On October 3, 2014, Robert responded *pro se*,[3] claiming generally that he had administered the estate properly, that he had justification to delay compliance with the court's April 21, 2014 Order (or that he was not required to comply with it), and that he was in the process of finding an attorney to represent him in connection with the estate. The court scheduled a hearing for November 12, 2014, and an attorney, Brian Ritter, entered his appearance on Robert's behalf.

On December 23, 2014, the court held a hearing on the Petition with all siblings in attendance. Counsel for Joseph, Mark Mudd, represented to the court that the parties had come to an agreement before the hearing, which negated the need for the hearing to move forward:

[2] Some of the documents in the record refer to Mother as Bernice Maupin Baker, and some as Viola Bernice Baker, but they are one and the same person.

[3] Robert had retained at least two other attorneys over the life of the case.

> MR. MUDD: So we're here today on the Petition that we filed to remove the personal representative and request the Court to appoint a disinterested third party. In lieu of having an adversarial hearing this morning, in the holiday spirit, we have reached a settlement agreement hopefully.
>
> And the settlement agreement would be that within 21 days from now Mr. Ritter is going to provide Mr. Skolnick[4] and I a third party—excuse me. Mr. Ritter is going to find three different lawyers that are willing to serve in a capacity as personal representative for this estate, as a disinterested PR. And the three of us will agree on one of them.
>
> *And if we can't agree on one of them, then after 21 days this Court will appoint a third party lawyer.*
>
> THE COURT: Okay.
>
> MR. MUDD: So within 21 days—*let me clarify that one more time, within 21 days all the parties will agree to the appointment of the personal representative*. *If the parties can work things out, it could be [Robert] again; if the parties can't work out things, it will be a disinterested third party.*
>
> *And if we can't do it within 21 days you all will have to figure it out.*
>
> Fair enough? Is that correct, gentlemen?[5]
>
> MR. SKOLNICK: Yes.
>
> MR. RITTER: *Yes.*

(Emphasis added.) Mr. Mudd went on to explain the significance of the agreement, stating,

"In other words, it will resolve the personal representative within 21 days and *if we cannot*

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[4] Shelton Skolnick represented Rebecca both individually and as Cynthia's guardian.

[5] Counsel for Joseph asserts that the presiding judge actually asked this question, rather than Mr. Mudd, but it doesn't matter for our purposes.

*do that, then we're asking the Orphans' Court to designate—*." At this point the judge, seemingly indicating that he understood the terms, elaborated, "[a] third party," and Mr. Skolnick chimed in, "—an attorney to—a third party to be the personal representative." Mr. Skolnick added that the parties were "hoping to resolve it before then."

The court asked that the parties submit the proposal in writing, "in case something happens and it isn't done and then we start all over. So we would like to have that proposal in writing." Mr. Mudd agreed:

> MR. MUDD: But for all of our purposes today we are resolving this Petition. And we're not going to come back and have a hearing on who is going to be appointed, *either the three of us are going to file a line with this Court that says we agree that X is appointed and if we don't, then we'll file a line with this Court that says you all please pick a third party.*
>
> THE COURT: Okay.
>
> MR. MUDD: And there's no need to have an adversarial hearing to go through all the ifs, ands, and buts.

(Emphasis added.)

Mr. Mudd did explain that he would not be able to get the written agreement to the court until January 5, and the court agreed. At that point one of the attorneys[6] chimed in with the following:

[6] Again, there is disagreement as to who said this. The transcript reflects that Mr. Skolnick did, whereas Joseph claims that Mr. Ritter made the comment. And again, we don't find that the identity of the speakers matters to our disposition of the matter.

> MR. SKOLNICK: In addition to that, too, what *we're going to do within that 21 day period*, my client is going to make an offer to buy out the other siblings' interest and they have within that 21 day time period to either accept, decline or make a counter offer. *And then if there's no agreement within that 21 day time period and it expires, then we will revert to the appointment of a third party.*
>
> THE COURT: Okay, super duper. Sounds like a winner to me. Thank you all very much and Merry Christmas.

(Emphasis added.)

On December 31, 2015, Mr. Mudd submitted a "Memorandum Of Hearing Held December 23, 2014." The Memorandum summarized the agreement that was placed on the record as follows:

> That *within twenty-one (21) days of December 23, 2014* (by January 23, 2015[7]) the parties would file with this Court a Joint Line consenting to a Personal Representative, and *if no consensus is reached within twenty-one (21) days, then this Court should remove Robert Baker as Personal Representative and appoint a successor third-party personal representative for this Estate.*

(Emphasis added.) Mr. Mudd emailed and mailed the Memorandum to counsel, and that same day Mr. Ritter filed what he styled a "Supplemental Memorandum of Court" in response on behalf of Robert. In the Supplemental Memorandum, he explained that he was filing it "in further clarification" of the initial Memorandum, and offered the following three paragraphs:

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[7] We'll discuss it below, but that's not a typographical error—the Memorandum stated, as the parties had in court, that the time period was twenty-one days, but then it offered an end date that suggested observance of a thirty-one day period.

1. The Parties agreed that within the twenty-one (21) day time frame after the court hearing held on December 23, 2014 (by January 23, 2014), [sic] Mr. Robert Baker would either accept Mr. Joseph Baker's offer of buying out his interest in the property for $42,500.00, or render a counter-offer.

2. If the matter was not resolved *within the twenty-one (21) day time period*, then within that twenty-one (21) day time period, Mr. Robert Baker was to choose, at his own discretion, and provide to opposing counsel, the names of one to three attorneys who practiced primarily estates and trusts law within Prince George's and/or Anne Arundel counties; these attorneys would constitute a pool of potential successor Personal Representatives suitable to Mr. Robert Baker.

3. At that point, the Parties would submit a joint Line with this Court agreeing to one of those attorneys.

4. Nothing in this agreement between the Parties shall constitute a waiver by the Personal Representative of his rights as a creditor of the Estate, his entitlement to a Personal Representative's commission, or any other right he may legally maintain.

(Emphasis added.)

Matters got more complicated after the holiday season. On January 5, 2015, Mr. Ritter moved to withdraw his appearance. He explained that at the hearing, "the parties came to an agreement *which was placed on the record*." But it seems that the afternoon of the hearing, Mr. Ritter "received an email [from Robert] instructing him not to have any further conversations with Mr. Skolnick . . . regarding this case, the house in question, or possible attorneys to be the potential Successor Personal Representative." He explained in the motion to withdraw that "[g]iven the litigious nature of this case, and the utmost necessity to have the authority to speak to opposing counsel, and the apparent conflict of

offending the explicit instructions given to me by [Robert], it is impossible for me to continue representing [Robert] and achieve the goal of administering this estate to closure."

Mr. Mudd filed a Line on January 14, 2015, asking the court to appoint a third-party successor personal representative. He explained that "[i]n accordance with the representations made before this Court [at the hearing,] . . . the parties have been unable to agree upon the appointment of a successor personal representative for the estate." In response, Robert, proceeding *pro se*,[8] filed a "Petition" with the court in which he claimed that he did *not* agree to the terms stated at the hearing, and that he only agreed not to proceed with the hearing if he "was allowed to pick the personal rep to succeed me." He further asserted that the Memorandum that Mr. Mudd had filed did not properly memorialize the parties' agreement.

On January 27, 2015, the court issued an order denying Robert's petition. It reasoned that the petition lacked Mr. Ritter's signature (he was still the attorney of record), it "contain[ed] an incomplete Certificate of Service," and as a substantive matter, the court explained that "[t]he relief requested does not comply with the terms of the agreement of the parties proffered in open court on December 23, 2014." Also on January 27, 2015, the court granted Mr. Ritter's motion to withdraw. Finally, the court issued an order that removed Robert as personal representative and appointed Samuel C. P. Baldwin as Successor Personal Representative.

[8] The court did not grant Mr. Ritter's motion to withdraw until January 27, 2015, but it appears that Robert assumed he was on his own when it came to responding to the Line.

On February 11, 2015, Robert filed a Motion to Remove Mr. Baldwin, and the court scheduled a hearing for April 28, 2015. But meantime, on February 24 and 25, 2015, Robert filed a Notice of Appeal and an Amended Notice of Appeal, respectively, appealing both the order removing him as personal representative, and the order appointing Mr. Baldwin as successor. The Orphans' Court issued an order postponing the hearing and staying the matter until we addressed the appeal.

## II. DISCUSSION

Robert raises seven issues in his brief,[9] but the core of his claim is simply that he did not agree to the terms memorialized at the hearing, and so the court couldn't later hold him to it. After reviewing the record, we disagree.

[9] Robert presents the following questions for our review:

> 1. Given the strength of [Robert's] defense, and the obvious confusion regarding the pre-hearing agreement, did the lower court err in not allowing the re-scheduling of a hearing on the removal of [Robert] as personal representative?
>
> 2. Did the lower court err in removing [Robert] as personal representative without a hearing?
>
> 3. Did the lower court err in not approving the successor personal representative, DeCaro and Howell, as so named by the personal representative in a timely manner in accordance with the pre-trial agreement?
>
> 4. Why would [Robert] agree to being replaced as Personal Representative without some type of condition that he controlled, or gained by, that was not subject to the whim or desire of [Joseph]?
>
> 5. Were the terms of a contract violated? (continued...)

*First*, we address Joseph's claim that Robert may not appeal the entry of the agreement in the first place (and we view the agreement, as the parties do, as a consent order). *See Barnes v. Barnes*, 181 Md. App. 390, 409 (2008). Although it is true that, as a general matter, one can't appeal an order to which he has agreed, *Suter v. Stuckey*, 402 Md. 211, 222-24 (2007), the rule has its exceptions. The most obvious is akin to the one we face here, where Robert is challenging the threshold question of whether he actually agreed to the terms of a settlement in the first place. *See Chernick v. Chernick*, 327 Md. 470, 477 n.1 (1992) (explaining that "[a]n appeal will lie from a court's decision to grant . . . a consent judgment where it was contended below that the consent judgment was not, in fact, a consent judgment" (internal quotation marks omitted)).

We review the court's approval of the agreement for an abuse of discretion, *Smith v. Luber*, 165 Md. App. 458, 467 (2005), and reverse only where "'justice has not been done,'" and "'there is a grave reason for doing so.'" *Das v. Das*, 133 Md. App. 1, 16 (2000) (quoting *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999)). Nonetheless, we will not hesitate to find an abuse of discretion when a consent order has been approved that varies from the terms of the parties' express agreement. *Long v. State*, 371 Md. 72, 89-93 (2002); *Smith*, 165 Md. App. at 467-79.

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6. Given the history of [Robert] with attorney Samuel C. Baldwin, was it improper to appoint Mr. Baldwin as personal representative in light of bias and disinterest?

7. Was it necessary to remove the personal representative in order to conclude this matter in the courts?

Robert claims that there is "obvious confusion" about the terms to which he actually agreed at the hearing,[10] and that he "would not have agreed to his replacement as personal representative without a hearing if he did not have something to gain." He attacks the appointment of Mr. Baldwin as improper based on the "potential of bias," and asks that we order a hearing regarding his removal as personal representative, and that he be permitted to name his replacement per what he claims was the parties' agreement. Joseph responds that Mr. Ritter accepted the terms of the agreement on behalf of Robert at the hearing, and that the terms of the agreement were unambiguous. He also argues that any claims about Mr. Baldwin's fitness as successor representative are not properly before us.

We don't agree with Robert that there was any ambiguity to the terms of the agreement. He was in court when the parties memorialized the agreement, and its terms parallel those memorialized in the Memorandum: he was given one more chance to choose a successor, and if he didn't provide one that the other siblings accepted, it would fall to the court to make the choice. Although Robert claims that he received no benefit from this

[10] On March 30, 2015, Robert filed an "Objection to Transcripts Provided as of March 30, 2015," with the Orphans' Court (sending a copy to this Court as well), in which he suggests that the transcripts provided for purposes of appeal did not "contain the full original testimony from the hearing." On May 12, 2015, the Orphans' Court overruled the objection "on the grounds that FTR Reporter—For The Record, the recording system utilized by this Court, creates a non-editable, secure file." On December 26, 2015, Robert wrote a letter to this Court in which he again claimed that certain testimony or statements by the parties and counsel did not appear in the transcript. To the extent that Robert's letter raises any new issues, we decline to address them. *First*, the Orphans' Court made a finding of fact in the May 12, 2015 Order that we will not disturb; and *second*, the letter contains no evidence to back up Robert's claims about alteration of the recording or the "communications from the publisher" of the software about how recordings might be altered.

agreement—that somehow it lacked the consideration to constitute a proper "contract"—that's not the case. The parties effectively agreed that they would try to work it out and failing that, the court would step in. The benefit that Robert gained was that the *court* ultimately would take control of the process, removing the decision of who would serve as successor not just from him, but from Joseph and his siblings as well. So the benefit he received was the benefit of cutting them out of the decision-making process—a substantial one, to be sure, given the obvious rancor within the family.

Although Robert points to the Supplemental Memorandum to suggest that it contested the terms of the agreement among the parties, we don't agree that it did anything of the sort. And looking carefully at its terms, it actually would have given the court every reason to think that Robert *did* agree to the terms memorialized in the Memorandum that Mr. Mudd filed. *First*, it is captioned a "supplemental" memorandum. The word "supplement" suggests not contradiction, but adding on to something already established. *See* Merriam-Webster's Collegiate Dictionary 1255-56 (11th ed. 2011) (defining "supplement" as "something that completes or makes an addition"). *Second*, the text of the Supplemental Memorandum states that it is filed "in further clarification" of the Memorandum—not in an effort to repudiate its terms. Robert now claims that the Supplemental Memorandum "accurately reflects the full agreement made between the parties," but its supplemental character and the fact that it is offered as clarification refute the idea that Robert or his counsel disagreed with the terms laid out in the initial Memorandum. *Third*, the Supplemental Memorandum discusses in its first paragraph the parties' negotiations about a buy-out, which the initial Memorandum did not. That too

suggests that it was worth it to Robert (through his attorney) to memorialize that point on the record. *Finally*, we can't forget what the Supplemental Memorandum does *not* say: nothing in its four paragraphs suggests that Robert disagrees with the terms of the Memorandum that Mr. Mudd filed. We are not facing what the *Smith* Court faced, where the challenging party contested an agreement and "it was clear to both the parties and the court that there was no consent to the terms of the written agreement." *Smith*, 165 Md. App. at 467-78. We have the opposite: Robert actually *did* file something with the court—the Supplemental Memorandum—that specifically *failed* to contest the agreement reached at the hearing.

The Supplemental Memorandum even perpetuated the sloppy math that the Memorandum started. Both documents refer to the time period as twenty-one days (*i.e.*, from December 23, 2014 to January 13, 2015), but then give a deadline of January 23. Robert claims that this means the parties agreed to wait until January 23 for him to submit the names of attorneys. But the on-the-record hearing referred consistently to a twenty-one day period, and both memoranda spell out the same. Robert had until January 13, 2015, to comply.

We decline to address Mr. Baldwin's fitness as successor personal representative because the question is not before us (and we don't mean to suggest that Mr. Baldwin is unfit to serve as personal representative). The Orphans' Court has not yet ruled on Robert's Motion to Remove Mr. Baldwin, and stayed the hearing on the motion until we issue this opinion. Until that hearing has gone forward, and the court rules on the motion, there is no record for us to review in that regard. *See* Md. Code (2006, 2013 Repl. Vol.), § 12-301

of the Courts & Judicial Proceedings Article (requiring a final order of the court from which an appeal may be taken); *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010).

**JUDGMENT OF THE ORPHANS' COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**