UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1023

September Term, 2016

IN THE MATTER OF THE ESTATE OF
ANDREA AYERS STRAKA

Woodward, C.J.,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 19, 2017

This appeal arises from a dispute regarding the last will and testament of Andrea Ayers Straka. Appellant George M. Straka is the decedent's father and intestate heir.[1] Mr. Straka appeals an order of the Orphans' Court for Worcester County appointing Amy Shealer personal representative of the decedent's estate.

Straka presents six issues for our consideration on appeal, which we have consolidated as five issues and rephrased as follows:

> I. Whether the orphans' court abused its discretion by denying Straka's motion to postpone the April 19, 2016 hearing.
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> II. Whether the orphans' court erred as a matter of law when it declined to stay probate proceedings and conducted the April 19, 2016 hearing, after which the court removed Straka as special administrator, appointed Shealer as personal representative, and admitted the decedent's last will and testament into probate.
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> III. Whether the orphans' court erred by denying Straka's oral motion to transmit issues to the circuit court.
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> IV. Whether the orphans' court erred by allowing counsel to take the testimony of two witnesses rather than examining the witnesses itself.
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> V. Whether the orphans' court erred by admitting an allegedly defective petition for judicial probate.

For the reasons explained herein, we shall hold that the orphans' court erred by proceeding with the April 19, 2016 hearing after the filing of a petition to caveat. In light of our determination, we shall not address the remaining issues on appeal.

[1] Andrea Ayers Straka's mother passed away in 2001. She had been divorced from the decedent's father for over thirty-five years prior to her death.

FACTS AND PROCEEDINGS

On March 28, 2016, Andrea Ayers Straka ("the decedent") died suddenly at age thirty-seven of pneumonia caused by methicillin-resistant staphylococcus aureus. She had never married and had no children.

On March 30, 2016, George M. Straka ("Straka") met with the Worcester County Register of Wills, the Honorable Charlotte Cathell, and filed a petition for probate of a regular intestate estate. Straka affirmed that he had "made a diligent search for the decedent's will." Straka identified himself and the decedent's four half-sisters as the decedent's living heirs. The Register of Wills issued an administrative probate order appointing Straka personal representative and issued Straka letters of administration.

Also on March 30, 2016, the Register of Wills sent a facsimile to the law firm Adelberg, Rudow, Dorf & Hendler, LLC ("Adelberg Rudow"). Adelberg Rudow had represented the decedent during her life. The Register of Wills contacted Adelberg Rudow to inquire as to whether they possessed a will of the decedent. Robert M. Horne, Esq., responded, indicating as follows:

> We acknowledge receipt of your facsimile from earlier this morning, March 30, 2016, inquiring about our firm's possession of a Last Will and Testament for Andrea Ayers Straka, deceased. Please be advised that with regards to Ms. Straka, our firm is in compliance with the requirements imposed by Section 4-202 of the Estates and Trusts Article of the Annotated Code of Maryland.[2]

[2] Md. Code (1974, 2011 Repl. Vol.), § 4-202 of the Estates and Trusts Article ("ET") provides:

> As you are aware, the attorney-client privilege survives death and we are unable to provide any additional information at this time.

Later that afternoon, the Last Will and Testament of Andrea Ayers Straka ("the Will") was filed with the Register of Wills office at 4:18 p.m. The Will was executed on July 15, 2015 and appointed Amy Shealer ("Shealer"), the decedent's friend as personal representative.[3] Shealer estimates the value of the decedent's estate as exceeding three million dollars. The Will provided that approximately half of the decedent's estate was left to Shealer and her two minor grandchildren. Approximately half was left to the decedent's "best friend," William J. Mumma, with whom the decedent resided prior to her death. The Will included bequests of $70,000 to Straka and $30,000 to two of Straka's children (the decedent's half-sisters). The Will included additional bequests, including to a charitable animal welfare organization for which the decedent had volunteered during her lifetime.

> After the death of a testator, a person having custody of his will shall deliver the instrument to the register for the county in which administration should be had pursuant to § 5-103 of this article. The custodian may inform an interested person of the contents of the will. A custodian who willfully fails or refuses to deliver a will to the register after being informed of the death of the testator is liable to a person aggrieved for the damages sustained by reason of the failure or refusal.

[3] The Will appointed the decedent's friend, William J. Mumma, co-personal representative. The record reflects that Mr. Mumma is ineligible to serve as personal representative. The reason for his ineligibility is absent from the record of this appeal and irrelevant to our determination of the issues.

On April 5, 2016, Shealer filed a petition for regular administration of the decedent's estate ("the Petition") with the Register of Wills. Shealer requested that the Will be admitted to judicial probate. Shealer noted that the Will previously delivered to the Register of Wills on March 30, 2015 had been "[f]ound among the [d]ecedent's important papers." The Petition specifically requested that the court find that the Will was duly executed, that the decedent was legally competent to make the Will, and that the Will had been attested to and executed by two witnesses. Shealer also filed a list of interested persons, notice of appointment, notice to creditors, notice to unknown heirs, and appointment of resident agent.

In response, the Register of Wills scheduled a hearing on the Petition for April 19, 2016. A notice of hearing was sent to all interested persons on April 5, 2016. Also on April 5, 2016, the Register also issued a notice of judicial probate which was advertised in the Maryland Coast Dispatch, a newspaper of general circulation in Worcester County. The Register of Wills mailed a letter to Straka, notifying him that the letters of administration were revoked, requesting that Straka return the letters of administration to the Register's office "immediately," and advising Straka that his status had been changed from personal representative to special administrator.

Straka's attorney entered his appearance on April 15, 2016. [4] On the same day, Straka filed a petition to caveat the Will, a notice of caveat, a public notice of caveat, and

[4] Shealer notes that, approximately ten days prior to the filing of the entry of appearance, Mr. Horne had been in contact with Straka's attorney regarding the decedent's estate. Shealer suggests that Straka's attorney "appears to have timed the filing of his Entry

a motion for postponement regarding the April 19, 2016 hearing. In the motion for postponement, Straka argued that a postponement was warranted because: (1) Straka had "just retained" counsel and was filing simultaneously a petition to caveat, (2) "in light of the filing of the [p]etition to [c]aveat, the April 19, 2016 [h]earing, which was scheduled to determine the appointment of a [p]ersonal [r]epresentative, is no longer necessary," (3) Straka intended "in the very near future to file a petition to transmit issues in the caveat matter to have the caveat issues determined by the [c]ircuit [c]ourt," and (4) counsel had a scheduling conflict with the April 19, 2016 hearing date. The Register of Wills advised Straka that, due to the limited schedule of the orphans' court, the motion for postponement would not be received and considered by the orphans' court until April 19, 2016, the day of the hearing.

On April 19, 2016, the orphans' court conducted a hearing on the Petition. The hearing was attended by Straka and his attorney, Matthew S. Ballard, Esq.; Shealer and her attorney, Geoffrey Washington, Esq.; Jesse B. Hammock, Esq., counsel for Mr. Mumma; and the two witnesses to the signing of the Will. The orphans' court denied Straka's motion for postponement and proceeded with the hearing. The orphans' court permitted Shealer's attorney to take the testimony of the two witnesses who witnessed the signing of the Will, Alan Forsythe and Mark Burdette. Both witnesses testified that they witnessed the decedent sign the Will, and each witness testified that he observed the other witness sign

of Appearance close in time to the judicial probate hearing." Straka asserts that he retained counsel on April 13, 2016, and that his attorney's entry of appearance was entered "immediately" and docketed two days later.

the Will as a witness. Mr. Burdette testified that there was nothing unusual about the decedent's behavior that day. Straka's attorney cross-examined both witnesses about their recollections. Following the witnesses' testimony, Straka made an oral motion to transmit issues to the circuit court. Shealer objected, arguing that no answer had yet been filed and that no issues were ripe to be transmitted.

Following testimony from the two witnesses, the court took a brief recess. When court resumed, Shealer's attorney informed the court that, during the recess, Straka threatened and attempted to intimidate the testifying witness. Straka made the symbol of a gun with his hand, pointed his hand at the witness, moved his thumb to simulate pulling a trigger, and said, "you're a dead man." The court ordered that Straka be removed from the courtroom, and thereafter, delivered its ruling.[5] The orphans' court denied Straka's motion to transmit issues and ruled that the petition to caveat would "not be considered today" because it was "incomplete." The court admitted the Will to probate and appointed Shealer as personal representative. Straka's attorney informed the court that he would be noting an appeal.

Following the hearing, Straka filed an amended petition to caveat, which included the information which the Register of Wills had noted was incomplete on the previous petition to caveat, namely, a full list of interested persons. On April 19, 2016, the orphans'

[5] After the courtroom was cleared, Straka was returned to the courtroom. The court admonished Straka to behave appropriately in court and explained that he would be held in contempt and detained if he engaged in future outbursts.

court issued a written order memorializing the rulings it had made from the bench earlier that day.

On April 26, 2016, Straka filed a motion to reconsider or to alter and amend judgment. Straka argued that the orphans' court "lacked jurisdiction to appoint a personal representative (as opposed to a Special Administrator) after the filing of a timely caveat petition before probate of the Will."[6] Straka further argued that the proceeding should have been stayed due to the filing of his petition to caveat. Shealer filed an opposition on May 17, 2016, and the orphans' court denied Straka's motion to reconsider on June 21, 2016. In its order, the court commented that it was "troubled by several misrepresentations of fact contained in [Straka's] [m]otion." This appeal followed.

Additional facts shall be included as necessitated by our discussion of the issues.

DISCUSSION

Straka contends that the orphans' court erred by proceeding with the April 19, 2016 hearing because the filing of his petition to caveat should have served to stay the proceedings. Straka maintains that, because the proceeding should have been stayed, it was error for the orphans' court to remove Straka as special administrator, appoint Shealer personal representative, and admit the Will to probate. Shealer responds by arguing that the stay requirement was based upon an earlier version of the statute. Shealer emphasizes

[6] After Straka filed the amended petition to caveat, which corrected the deficiencies of the original petition to caveat, Shealer's power and authority as personal representative was reduced to that of a special administrator.

that the current statute contains no such stay requirement. As we shall explain, we agree with Straka that the stay requirement applies.

It is well established that a petition to caveat a will "operates as a stay until the issues are determined, although the court may appoint an administrator *ad litem*." *E.g., Kent v. Mercantile-Safe Deposit & Trust Co.*, 225 Md. 590, 594 (1961). In *Keene v. Corse*, 80 Md. 20, 22-23 (1894), the Court of Appeals held that "the plain letter of the statute" then in force, "as well as its manifest purpose and intention, permits the orphans' court to admit a will to probate only after notice had been given, and if there be no objection or no caveat filed." Accordingly, the Court held that "[t]he filing of a caveat at any stage before an order has been signed admitting the will to probate arrests all further proceedings until the caveat has been disposed of." *Id.* This holding was reaffirmed in *Gibert v. Gaybrick*, 195 Md. 297, 305 (1950) ("The filing of a caveat at any stage before an order has been signed admitting the will to probate arrests all further proceedings until the caveat has been disposed of."), and *Kent*, *supra*, 225 Md. at 594.

The language in the current statute governing the effect of a petition to caveat has been unchanged since 1969. A review of the prior statute and the 1969 legislation is helpful when considering the applicability of pre-1969 caselaw on this issue. Prior to 1969, the relevant statute governing the effect of a petition to caveat was codified at Md. Code, Art. 93, §§ 379, 381 (1957). Section 379 provided as follows:

> If any person whatever shall enter a caveat against such will or codicil, either before or after it shall be exhibited to the register of wills or orphans' court, the said caveat shall be decided by the court. **If any person shall enter a caveat against any will or codicil of which probate shall have been taken by the**

> **register as aforesaid, no letter testamentary shall be granted until a determination shall be had in the orphans' court.**

(Emphasis supplied.)

Art. 93, § 381 provided:

> If the probate of any will or codicil be taken as aforesaid without contest, any person, before letters testamentary or of administration with a copy of the will shall be actually granted, may file a petition to the court praying that the case may against be examined and heard, and thereupon **the orphans' court shall delay the granting of letters until a decision shall be had on the petition**, and in case the letters shall have been granted, and any person shall file such petition, and the court on hearing both sides -- that is to say, the petitioner and the grantee of such letters -- shall decide against the probate, the letters aforesaid shall be revoked and the power of the party under the letters shall cease, and the said will shall not be proved in any other county, unless the decision be reversed on appeal.

(Emphasis supplied.) It is these two statutes upon which the Court of Appeals based its holding that a petition to caveat operates as a stay of proceedings.

Shealer acknowledges that, pursuant to the pre-1969 statute, the orphans' court was not permitted to proceed with a hearing on judicial probate where a caveat (or intention to caveat) had been filed. She urges, however, that "[t]he current version of the statute says no such thing." The current statute governing the effect of a petition to caveat is found in Md. Code (1974, 2011 Repl. Vol.), § 5-207(b) of the Estates and Trusts Article ("ET"), and provides, in relevant part:

> 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.

Shealer maintains that, pursuant to ET § 5-207(b), a stay is not required. Our review of the history of the current ET § 5-207(b) compels a contrary conclusion.

The current ET § 5-207(b) was first enacted in 1969, with language identical to that in effect today, and then appeared in Art. 93, § 5-207(b) of the Md. Code (1957, 1969 Repl. Vol.). *See* Laws of Maryland 1969, Ch. 3, § 1. The comment to Art. 93, § 5-207 is particularly instructive, providing in relevant part:

> In place of all of the provisions of the prior law relating to a notice to caveat and the caveat procedures, the new statute has substituted the single, simple procedure contained in Section 5-207 which should be equally effective and protective of the caveator's rights. In the event of a caveat, judicial probate is mandatory. See Section 5-402.
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> **Section 5-207 is intended to follow the prior law in former §§ 379 and 381.**
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> ***
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> The procedure for the hearing of a caveat case, including the transmission of issues to a court of law, is set forth in Sections 1-205 and 5-404. No change in the prior law respecting such procedure is intended.

(Emphasis supplied.) The same comment appeared when the statute was recodified at Md. Code (1974), § 5-207(b) of the Estates and Trusts Article, appearing with the title, "Comment to Former Article 93, § 5-207."

Although Shealer is correct that ET § 5-207(b) does not specifically refer to a stay requirement upon the filing of a petition to caveat, she fails to cite any authority to support her proposition that the caselaw articulated in *Keene*, *supra*, 80 Md. at 22-23, *Gilbert*,

supra, 195 Md. at 305, and *Kent*, *supra*, 225 Md. at 594, is no longer good law. Based upon our review of the history of the current ET § 5-207(b), and particularly the comment to the former Art. 93, § 5-207, as well as the absence of any contradictory authority, we conclude that the holding of *Keene* still controls. Accordingly, we hold that the orphans' court erred by proceeding with the judicial probate hearing, admitting the Will to probate, and appointing a personal representative.

We further reject Shealer's alternative argument that a stay was not required because the petition to caveat filed by Straka on April 15, 2016 was incomplete because it did not comply with Maryland Rule 6-431(c)(7). Pursuant to Rule 6-431(c)(7), a petition to caveat shall include "a statement that the list of interested persons filed with the petition contains the names and addresses of all interested persons who could be affected by the proceeding to the extent known by the petitioner."[7] The original petition to caveat filed by Straka on April 15, 2016 did not include a complete list of interested persons.

Critically, our review of the record indicates that the orphans' court did not dismiss Straka's petition to caveat.[8] Rather, the court observed that the petition was incomplete and did not otherwise address the petition at that time. Furthermore, pursuant to Md.

[7] Rule 6-431(d) provides that a petition to caveat "shall be accompanied by a list of all interested persons who could be affected by the proceeding in the form prescribed by Rule 6-316." Maryland Rule 6-316 defines "interested person" and provides the form on which a list of interested persons shall be filed.

[8] Straka asserts that the orphans' court effectively dismissed his petition to caveat due to procedural defects. Straka argues that this was erroneous for multiple reasons. In light of our determination that the orphans' court did not in fact dismiss the petition, we do not address whether the orphans' court could have dismissed the petition to caveat due to its incomplete list of interested persons.

Rule 6-127, "[a]mendments to papers filed with the [orphans'] court or the register shall be freely allowed when justice so permits." Because the petition had not actually been dismissed and was still pending as of the April 19, 2016 hearing, the orphans' court was required to stay the proceeding pending the resolution of the caveat matter.

We further reject Shealer's assertion that any error by the orphans' court by proceeding with a hearing on Shealer's petition for judicial probate constituted harmless error. Shealer asserts that Straka has failed to prove prejudice. Straka responds that he has demonstrated prejudice because Shealer has continuously asserted in various pleadings and other proceedings before the orphans' court that *res judicata* bars Straka from raising the issue of due execution. There is no evidence in the record to support Straka's allegation that Shealer has raised *res judicata* arguments, but we observe that pursuant to ET § 5-406, except for certain circumstances inapplicable here, "any determination made by the court in a proceeding for judicial probate is final and binding on all persons." As such, the orphans' court's determinations at the April 19, 2016 hearing are final and binding, and arguably constitute prejudice to Straka.

In light of our determination that the orphans' court erred by not staying probate proceedings and proceeding with the April 19, 2016 hearing, we shall not reach the issues of whether the orphans' court erred by denying Straka's motion for postponement, by

denying Straka's motion to transmit issues to the circuit court, by permitting Shealer to examine witnesses, or by admitting an allegedly defective will to probate.[9]

JUDGMENT OF THE ORPHANS' COURT FOR WORCESTER COUNTY REVERSED. ORDER DATED APRIL 19, 2016 ADMITTING WILL TO PROBATE AND APPOINTING SHEALER PERSONAL REPRESENTATIVE VACATED. CASE REMANDED TO THE ORPHANS' COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[9] Straka claims that the Will was a copy rather than an original and makes references to purported opinions of an expert witness with respect to this issue. This issue was never raised before the orphans' court, and no expert testimony or expert report is found within the record. Shealer filed a motion to strike Straka's references to evidence outside the record. Because we do not address the issue relating to the validity of the Will on appeal, we need not address whether Straka inappropriately referenced evidence outside the record. Accordingly, we deny Shealer's motion to strike as moot.