Circuit Court for Talbot County
Case No. C-20-CV-17-000151

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2058

September Term, 2018

KRISTINA C. HEROLD

v.

JULIE MORRONE, ET AL.

Friedman,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: October 28, 2019

This is an appeal from an order issued on July 16, 2018, by the Circuit Court for Talbot County granting Kristina Herold's petition for reimbursement of attorneys' fees. The order required that the monies be deducted from the Estate of Fredrick W. Herold (decedent) "without attribution to any heir's distributive share." Appellant, Kristina Herold, is the widow of Fredrick Herold (decedent) and appellees (Julie Morrone, Allison Dickie, Kristin Larimore, Jonathan Herold, and Fredrick W. Herold, Jr.) are decedent's five surviving children from a previous marriage. Appellant noted this timely appeal.

Fredrick W. Herold, Jr. (appellee), is the sole surviving issue to respond to appellant's appeal. He also noted a counter appeal against her.[1] His appeal, however, was not timely. Maryland Rule 8-202, states that an appeal must "be filed within 30 days after entry of the judgment or order from which the appeal is taken" or "30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534." Here the final order was issued on July 16, 2018. Fourteen days later appellant filed a post judgment motion to "Alter and Amend Judgment." The order denying his motion was filed on August 8, 2018.

[1] Appellee raised the following questions in his stricken cross-appeal:

1. Did the Circuit Court err when it awarded reimbursement to Ms. Herold for legal fees?
2. Did the Circuit Court prejudice the cross-appellant by failing to properly and timely serve him with its July 16, 2018 order granting [appellant's] cross-motion for summary judgment?

Maryland Rule 2-534 allows a motion to be filed within ten days after a judgment has been entered. "A motion styled as a motion to alter or amend a judgment under Rule 2-534, if filed more than 10 days after entry of judgment, does not stay the time period for noting an appeal to this Court." *Estate of Vess*, 234 Md. App. 173, 194–95 (2017). Appellee's notice of appeal filed September 14, 2018, almost two months after the final order was issued, was not timely filed. As a result, his cross appeal is stricken.

Appellant presents the following questions for our review:

1. Did the Circuit Court err when it held that it lacked the authority to equitably apportion attorneys' fees awarded pursuant to Section 7-603?

2. Did the Circuit Court err when it ordered the appellants spousal elective share was subject to reduction by litigation related attorneys' fees in violation of Section 3-203?

For the reasons discussed below we conclude that there was no error and thus shall affirm.

BACKGROUND

Appellant was married to decedent for more than 20 years until his death on January 11, 2014. She subsequently attempted to probate a copy of decedent's 2002 will in the Orphans' Court for Talbot County. The will appointed her as the estate's personal representative and bequeathed a majority of decedent's estate to her and the decedent's grandchildren. The 2002 will made no mention of bequeathments to appellees and appellees strongly opposed appellant's attempt to probate the 2002 will. They accused her of forging the 2002 will as well as decedent's Advanced Medical Directive. Appellees claimed appellant used the forged medical directive to untimely end decedent's life

support. They filed a wrongful death lawsuit against appellant which was later dismissed by the circuit court. They also initiated criminal charges and two federal civil suits were filed against her. The criminal case was *nolle prossed* and the civil law suits were dismissed.

After several years of conflict with appellees, appellant withdrew her request to probate the 2002 will and agreed to allow decedent's will from 1988 (1988 will), which was created prior to their marriage, to be probated. She then elected to receive her spousal elective share.

On March 21, 2017, appellant petitioned the Orphans' Court for attorneys' fees, which appellees opposed. On June 20, 2017, following an evidentiary hearing, the Orphans' Court granted appellant's petition for attorneys' fees. The Orphans' Court ordered "payment of award to be apportioned equally from the individual shares of the residuary distribution of the estate payable to Fredrick W. Herold, Jr., Julie H. Morrone, Kristin Larimore, Allison Dickie, and Jonathan Herold." The order further stated "that such payment of legal services shall not be apportioned to Kristina C. Herold's spousal statutory share. Appellees then noted a *de novo* appeal to the circuit court.

Appellant responded to the appeal and filed a motion for summary judgment arguing that she acted in "good faith" and that the attorneys' fees were reasonable. On July 13, 2018, the circuit court held a hearing on appellant's motion and granted summary judgment. The judge stated the following:

> And in that context the issue before the Court is, starts with section 7-603 of the estates and trusts article that provides when a personal representative or person nominated as a personal representative defends or prosecutes a

> proceeding in good faith with just cause he shall be entitled to receive his necessary expenses and disbursements from the estate regardless of the outcome of the proceeding. In this proceeding, and the critical language there is, person nominated as a personal representative and if you go to the *Piper Rudnick vs. Hartz*, 306 Maryland or I'm sorry, 386 Md. 201 the Court of Appeals found that it isn't just someone who is a personal representative or someone who has a valid will it's someone who files what purports to be a valid will and is nominated within that will may seek reimbursement under 7-7 under section 7-603 of the estates article. And in this context [appellant] had what purported to be a valid will although there were problems with it, problems that were never finally litigated, but problems with it but nevertheless purported to be a valid will. And in that context that entitled her to present that will to the Register of Wills, to the Orphan's Court and imposed on her the obligation to do whatever it said to do under that will. And in that context [,] she would be entitled to attorney's fees under 7-603.

The court held that appellant's reimbursement for attorneys' fees would derive "from the gross amount of the estate and not to be allocable to any distributive share." When making that determination the judge stated:

> . . . the *Piper Rudnick* case the cardinal rule of statutory interpretation is to look at the plain language of the cardinal rule, statutory interpretation is to ascertain and effectuate the intent of the legislature and in this context, 7-603 says that the fees are to be paid from the estate. The estate is the gross amount of assets that Mr. Herold Sr., left this world. It does not deprive [appellant] she's not going out of pocket as Ms. Morrone notes, she's not picking from one pocket and going to the other. . . . The money is Mr. Herold Sr.'s until it's distributed. That money comes from the estate. There is nothing in the statute nor can the Court find any case law that would allow for a distribution to be assessed against the distributive share of other parties.

On July 16, 2018, the court issued an order in accordance with the oral ruling. Appellant noted her appeal.

STANDARD OF REVIEW

When reviewing a trial court's determination and "an order [that] involves an interpretation and application of Maryland constitutional, statutory or case law, the

appellate Court must determine whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review." *Schisler v. State*, 394 Md. 519, 535 (2006). The findings of the lower courts "are entitled to a presumption of correctness[,]" but when the matter involves an interpretation of law, "the appellate court must apply the law as it understands it to be." *Battley v. Banks*, 177 Md. App. 638, 657, (2007) (citing *Pfeufer v. Cyphers*, 397 Md. 643, 648 (2007)). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Piper Rudnick LLP v. Hartz*, 386 Md. 201, 218 (2005). To grasp the intent of the legislature, "we first examine the plain language of the statute." *Comptroller of Treasury v. Phillips*, 384 Md. 583, 591 (2005). We must not look at the plain language alone, but "consider the particular and broad objectives of the legislation and the overall purpose of the statutory scheme." *Id.* "If the plain language of the statute is unambiguous and is consistent with the statute's apparent purpose, we give effect to the statute as it is written. *Id.*

> Our predominant mission is to ascertain and implement the legislative intent, which is to be derived, if possible, from the language of the statute (or Rule) itself . . . If the language is clear and unambiguous, our search for legislative intent ends and we apply the language as written and in a commonsense manner. We do not add words or ignore those that are there. If there is any ambiguity, we may then seek to fathom the legislative intent by looking at legislative history and applying the most relevant of the various canons that courts have created.

Downes v. Downes, 388 Md. 561, 571 (2005).

DISCUSSION

I. The court did not err when it stated that it lacked the authority to equitably apportion attorney's fees awarded pursuant to Section 7-603.

Appellant argues the circuit court committed error when it determined the attorneys'

fees would be paid directly from the net estate. She argues the circuit court did not properly exercise its discretion in apportioning the attorneys' fees, and its ruling was not consistent with Md. Code Ann., Est. & Trusts § 7-603 and *Piper Rudnick LLP v. Hartz*. Appellee does not directly refute appellant's claims on the merits, but rather focuses on issues that are not properly before us.[2] He argues that the court lacked jurisdiction and appellant had no standing because she was not the personal representative under the 1988 will. Both claims are meritless. The circuit court properly exercised its jurisdiction and appellant has standing as personal representative of the 2002 will.

"The decision to allow attorney's fees is dependent upon the Orphans' Court's exercise of its discretion to approve all, some, or none of the requested fees." *Beyer v. Morgan State Univ.*, 369 Md. 335, 353 (2002). The governing statute Md. Code Ann., Est. & Trusts § 7-603, states:

> When a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith and with just cause, he shall be entitled to receive his necessary expenses and disbursements from the estate regardless of the outcome of the proceeding.

In *Piper Rudnick LLP v. Hartz*, the Court of Appeals found the language of §7-603 "plain and unambiguous." *Piper Rudnick LLP v. Hartz*, at 218. The court further reiterated the language of *Webster v. Larmore* 268 Md. 153, 171 (1973) stating the legislative intent is

[2] Appellee seems to contest the validity of the 2002 will and appellant's role. The validity of the will and appellant's role in possibly forging the 2002 will are not an issue before us and have been settled by this court in a previous matter, as a result they will not be discussed beyond here. In *Fredrick W. Herold, Jr. v. Kristina C. Herold*, Court of Special Appeals, No. 1857, September Term, 2016, we upheld the circuit court granting Kristina Herold's request for summary judgment because Mr. Herold, appellee in this case, failed to provide admissible evidence that established appellant committed forgery.

to ensure "'the defense of a will whether before or after probate was to be at the expense of the estate' and that it is 'quite apparent, too, that the Legislative intent, as expressed in § 7-603, was that a defense of a will by either a personal representative . . . or by a person nominated as personal representative . . . should similarly be at the expense of the estate.'" *Id.* at 219. The court noted that the statute contains "two limitations: (1) the defense or prosecution must be 'in good faith and with just cause,' and (2) the expenses and disbursements must be 'necessary.'" *Piper Rudnick LLP v. Hartz*, at 218.

In the case at bar, appellant, as personal representative, sought to recover litigation expenses incurred when she attempted to probate her husband's 2002 will. According to her, the will was valid, and she withdrew her petition only after costly litigation with her husband's children. The circuit court ultimately ruled that she was "entitled to attorney's fees under 7-603."

In our view, the court did not err. The Court closely followed the language of the statute and found no requirement that she be the personal representative of the 1998 will but rather it was sufficient she "file[d] what purports to be a valid will and is nominated within that will[.]" The court also made a factual determination that appellant acted in "good faith and with just cause." *Piper Rudnick LLP v. Hartz*, at 218. The court found that the fees were "fair and reasonable" and necessary. We hold the trial court's conclusions were legally correct as the court's decision aligned with the clear language and legislative intent of the statute, as well as the facts presented.

Appellant argues the court erred when it required the fees be paid from the entire estate. She cites *Walker v. Waters*, a 1912 case, which is dissimilar to the instant case. 118

Md. 203 (1912). In *Walker*, heirs were attempting to challenge the construction of a will to obtain their inheritance and the Court held that the attorneys' fees should be paid from the parties' interest in the estate. Here the personal representative, sought attorneys' fees incurred in defending a purported valid will.

Further, the *Walker* case was decided prior to 1937, at a time when Maryland statutes did not "expressly" authorize courts to grant attorneys' fees to personal representatives.

> In 1937, the General Assembly enacted Article 93 § 7.1937 Md. Laws, Chap. 441. This new section, for the first time, authorized an attorney to petition an orphans' court and the orphans' court to allow reasonable expenses to that attorney for services rendered to the estate. *Id.* The Legislature expanded the section in 1959, adding "or to an executor or administrator of an estate" to the first line of what had become Article 93 § 10. 1959 Md. Laws, Chap. 291.
>
> In 1966, the General Assembly first addressed . . . the expenses of a personal representative in defending or prosecuting proceedings. The General Assembly enacted 1966 Md. Laws, Chap. 200, which created Article 93 § 49A. Article 93 § 49A provided as follows:
>
> "When any person designated as an executor in a will, or the administrator with the will annexed, defends the will or prosecutes any proceedings in good faith and with just cause for the purpose of having the will admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees in such proceedings."
>
> The statutes took their current form in 1969.

Piper Rudnick LLP, at 221–22 (internal citations omitted).

In making its decision, the court, in the present case stated:

> However, I, as noted in the *Piper Rudnick* case the cardinal rule of statutory interpretation is to look at the plain language of the cardinal rule, statutory interpretation is to ascertain and effectuate the intent of the legislature and in this context, 7-603 says that the fees are to be paid from the estate. The estate

> is the gross amount of assets that Mr. Herold Sr., left this world. It does not deprive [appellant] she's not going out of pocket as Ms. Morrone notes, she's not picking from one pocket and going to the other. I am not quoting you directly but that was the analogy. The money is Mr. Herold Sr.'s until it's distributed. That money comes from the estate. There is nothing in the statute nor can the Court find any case law that would allow for a distribution to be assessed against the distributive share of other parties."

We agree. Section 7-603 provides a personal representative is "entitled to receive his necessary expenses and disbursements from the estate." The plain language of the statute being clear and unambiguous, the circuit court did not err in holding it lacked the authority to equitably apportion the fees.

II. The circuit court did not err when it ordered that appellant's spousal elective share was subject to reduction by litigation related attorney's fees.

Under § 3-203(b) of the Maryland Estates and Trust Code ". . . the surviving spouse may elect to take a one-third share of the net estate if there is also a surviving issue, or a one-half share of the net estate if there is no surviving issue." [3]

The statute defines the net estate as:

> (a) . . . property of the decedent passing by testate succession, without a deduction for State or federal estate or inheritance taxes, and reduced by:
>
> (1) Funeral and administration expenses;
> (2) Family allowances; and
> (3) Enforceable claims and debts against the estate.

[3] As of October 1, 2019, § 3-203 (b) will read as the following:

> (b) Instead of property left to the surviving spouse by will, the surviving spouse may elect to take:
>
> (1) A one-third share of the net estate if there is also a surviving issue; or
> (2) A one-half share of the net estate if there is no surviving issue.

Appellant argues that the "net estate" does not include attorneys' fees and therefore her elective share should not be reduced by such fees. While we agree the statute does not explicitly use the term "attorneys' fees," it does, however, provide for "administration expenses." *Black's Law Dictionary* defines expenses of administration as "expenses incurred by a decedent's representatives in administering the estate." *Black's Law Dictionary* 699 (10th ed. 2014). Here the fees were incurred by appellant as personal representative while attempting to probate the 2002 will. The attorneys' fees are therefore administration expenses and the net estate must be reduced by them.

Appellant attempts to persuade us to accept the guidance of the District Court of Appeals of Florida in *Blackburn v. Boulis* reasoning that the Florida statute is similar to §3-203. In that case the Florida court ruled that the trial court erred when it deducted the attorneys' fees from the spousal elective shares. *Blackburn v. Boulis*, 184 So. 3d 565, 568 (Fla. Dist. Ct. App. 2016). Under the Florida § 732.207 statute, the elective share is computed after deducting:

> (1) All valid claims against the estate paid or payable from the estate; and
> (2) All mortgages, liens, or security interests on the assets.

We note, while § 732.207 of the Florida statute is somewhat similar to § 3-203 of the Maryland statute, it is nevertheless not binding upon this Court. Further, the Maryland statute is more expansive and specifically allows for the net estate to be reduced by administration expenses. In our view, if the Maryland legislature had intended to allow a personal representative to deduct attorneys' fees from the surviving spouse's elective share, it would have done so in clear language. We find no error in the circuit court's ruling

therefore, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT AND CROSS-APPELLANT/APPELLEE.