UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0774

September Term, 2015

WILMA CARROLL

v.

SUSAN WILLIAMS, ET AL.

Nazarian,
Reed,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 26, 2016

*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 appeal stems from an action brought in the Circuit Court for Baltimore County by Wilma Carroll, the appellant and biological daughter of the late David Stein, to have $1,107,598.29 plus statutory interest reimbursed to her father's Estate by her step-sister, Susan Williams. The appellant presents five questions for our review, which, for clarity, we have reduced to one and rephrased:[1]

1. Did the circuit court err where it granted Susan Williams' Motion to Strike, or in the Alternative, Motion to Dismiss Plaintiff's Third Amended Complaint for Declaratory Judgment?

For the following reasons, the record is insufficient to answer this question. Therefore, we shall vacate the judgment of the circuit court and remand for reentry of judgment consistent with this opinion.

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[1] The questions as presented by the appellant in her brief are as follows:

1. Can Appellant, as beneficiary of the Estate, bring suit against Appellee, independent of the Estate, when, if successful, the proceeds of the suit will go into the Estate of David Stein?

2. Did the trial court err in not allowing the Estate of David Stein to be added as a party in the Third Amendment to Complaint for Declaratory Judgment even though the deadline to add [a] party per the scheduling order had passed?

3. Does the Estate of David Stein have to be added as a party in order to proceed against Appellee?

4. Could the Estate of David Stein be added as a party to this matter as the Estate was closed?

5. If the Estate of David Stein is a necessary party to this matter, did the trial court err by dismissing the suit without leave to amend the complaint if the Estate of David Stein should be the plaintiff and not a defendant?

FACTUAL AND PROCEDURAL BACKGROUND

On April 30, 2011, approximately three and a half months after being discharged from the hospital in favor of in-home hospice care, David Stein (the "decedent") passed away at the age of ninety three.[2] Upon his death, his biological daughter, the appellant, received $80,247.84 from his estate (the "Estate") and approximately $600,000.00 in total from three of his transfer-on-death accounts. The decedent's step-daughter, Susan Williams ("Williams"), and his brother, Harry Stein, are together the appellees in this matter. The latter served as the personal representative of the Estate from the date of the decedent's death until May 19, 2015, when his role as personal representative was terminated by the Orphan's Court.[3] On February 19, 2013, upon the filing of the final accounting of the Estate, the appellant executed a written Receipt and Release which stated, in part, "I hereby release, acquit and exonerate the said Harry Stein, Personal Representative, from all further liability or responsibility[,] . . . hereby declaring my inheritance fully paid and satisfied."

On July 22, 2013, the appellant filed a Complaint for Declaratory Judgment against Williams, her step-sister, in Circuit Court for Baltimore County, alleging that Williams had unduly influenced the decedent to change the beneficiary designations on several of his investments shortly before his passing. On July 8, 2014, the appellant filed a First

[2] Neither the decedent's medical condition nor the treatment he received during the months leading up to his death is relevant to the present appeal.

[3] The reason for the termination of Harry Stein's role as personal representative of the Estate is explained below.

Amendment to Complaint for Declaratory Judgment ("First Amended Complaint"), also against Williams.[4] Unlike the original Complaint for Declaratory Judgment, the First Amended Complaint requested the return of a specific amount of money to the estate: $175,193.61 plus statutory interest to the Estate. This amount included a $50,000.00 check that the decedent wrote to Williams while he was in the hospital. It also included the balance of the decedent's Taylor Bank checking account to which the decedent, while he was in hospice, added Williams as a joint account holder with the right of survivorship. The appellant alleged that Williams unduly influenced the decedent into making these two transactions. On November 24, 2014, the circuit court issued a curbstone opinion that it did not have jurisdiction over the complaint for "want of a necessary party[, namely, the Estate,] as required by Rule 2-201." The court then gave both parties twenty (20) days in which to respond to its statement regarding the necessity of the Estate as a party.

On December 10, 2014, the appellant filed a request to add the Estate as a defendant pursuant to Md. Rule 2-341(b).[5] That same day, the appellant filed a Second Amendment to Complaint for Declaratory Judgment ("Second Amended Complaint"), increasing the amount she sought to have returned to the Estate by Williams to $1,107,598.29. The difference between the First Amended Complaint and the Second Amended Complaint was that in the latter, in addition to the $175,193.61 previously sought, the appellant attempted

[4] The record indicates that the appellant filed her initial complaint, which is of no consequence to this appeal, on July 22, 2013.

[5] This request was filed pursuant to Md. Rule 2-341(b) because the deadline in the scheduling order to add a party had already passed.

to retrieve the $932,404.68 that passed to Williams outside of probate as a result of two beneficiary designations the decedent made on a Wells Fargo account shortly before his death. On December 23, 2014, the appellant and Williams filed a joint motion to postpone the trial, which at the time was scheduled for January 12-14, 2015, on the grounds that they were still awaiting rulings on various dispositive motions, including the appellant's request to add the Estate as a defendant. The trial was subsequently rescheduled for July 15, 2015. On January 26, 2015, the court issued a Motions Ruling. In that Ruling, the court denied the appellant's request to add the Estate as a defendant because "[the request] was filed more than 30 days in advance of a then set trial date. That means that the process utilized by the Movant to amend through a motion is not what is recognized as to how an amendment is to be made under Rule 2-341."

On March 30, 2015, Williams filed a Motion to Dismiss the Second Amended Complaint and a Motion for Summary Judgment. On April 3, 2015, the appellant filed a Third Amendment to Complaint for Declaratory Judgment ("Third Amended Complaint"). The only difference between the Third Amended Complaint and the Second Amended Complaint was that the former named the Estate, in addition to Williams, as a defendant. On April 9, 2015, Williams filed a Motion to Strike, or in the Alternative, Motion to Dismiss Plaintiff's Third Amendment to Complaint for Declaratory Judgment ("Motion to Strike or Dismiss the Complaint"). She argued therein, among other things, that the "Third Amended Complaint was filed well after the [January 30, 2014,] deadline [for adding a party] set forth in the scheduling order[.]" A hearing was held on the Motion to Strike or

Dismiss the Complaint before the Honorable Paul J. Hanley on June 9, 2015. Judge Hanley did not make an oral ruling during the hearing, but instead indicated that he would "read *Tribull* [*v. Tribull*, 208 Md. 490 (1956),] and . . . get a ruling [out] within the next two days." Later that day, Judge Hanley issued an Order granting the Motion to Strike or Dismiss the Complaint. The Order did not state on which grounds the court relied, nor which aspect of the Motion to Strike or Dismiss the Complaint was being granted (*i.e.*, whether the Third Amended Complaint was being stricken on procedural grounds or dismissed for failure to state a claim).

It is additionally relevant that, as indicated above, the Orphan's Court terminated Harry Stein's role as personal representative of the Estate on May 19, 2015. Shortly thereafter, on May 28, 2015, the appellant filed a request to be named the new personal representative. The appellant was the only person to file such a request. However, on July 7, 2015, the Orphan's Court issued an Order that its decision regarding the appointment of a new personal representative would be held *sub curia* pending the outcome of this appeal.

DISCUSSION

I. MOTION TO STRIKE OR DISMISS COMPLAINT

A. The Contentions of the Parties

The appellant advances a number of arguments for why the Motion to Strike or Dismiss the Complaint should not have been granted. The first relates to beneficiary standing: "If the personal representative is unwilling to seek redress over a bank account

held by a third party, then, per *Tribull*, an estate beneficiary may seek independent action for estate recovery." Any other reading of *Tribull*, according to the appellant, would "force[] [the interested person] to file suit in Orphans' Court to force the personal representative to file suit against the third party." Therefore, the appellant argues that the circuit court erred if it found that she lacked standing to file suit on behalf of the Estate and thus granted the motion to dismiss portion of the Motion to Strike or Dismiss the Complaint.

The remainder of the appellant's arguments deal with the possibility that, due to the appellant's failure to meet the deadline for adding a party per the scheduling order, the court granted the motion to strike portion of the Motion to Strike or Dismiss the Complaint. The appellant points out that "Maryland is most liberal in allowing amendments so that causes of action may be heard on the merits," *Nam v. Montgomery Cty.*, 127 Md. App. 172, 185 (1999) (quoting *Osheroff v. Chestnut Lodge, Inc.*, 62 Md. app. 519, 526, *cert. denied*, 304 Md. 163 (1985)), and, citing *Mattvidi Associates Ltd. P'ship v. NationsBank of Virginia, N.A.*, 100 Md. App. 71, 83 (1994), argues that "amendments are to be denied only if prejudice to the opposing party or undue delay results." Along the latter lines, the appellant asserts that Harry Stein, the party whom the appellant sought to add beyond the scheduling order deadline, could not have been prejudiced because his role as personal representative of the Estate was terminated by the Orphans' Court prior to the date of the circuit court's hearing on the Third Amended Complaint. Furthermore, the appellant contends that it is unlikely that the next personal representative will be prejudiced because

she, herself, "is the only person seeking to become personal representative[.]" As for Williams, the appellant argues that she altogether failed to address prejudice or undue delay in her brief; therefore, according to the appellant, Williams has not met the requisite burden of showing that, with respect to herself, either would result.

Additionally, the appellant argues that non-joinder exception as expressed in *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657 (2007), which "focuses on the non-party's awareness of the suit and its failure to enter [the] suit despite its ability to do so," applies to the present case so as to render the scheduling order deadline meaningless.

Finally, the appellant responds to a couple of specific arguments raised in Williams' brief. In response to the argument that the Estate could not be added as a party because it had already made its final distribution of funds, the appellant asserts that "Md. Code Ann., Est. & Trusts § 10-105 allows the personal representative to act even after the estate is closed." Regarding the argument that Harry Stein was improperly added as a defendant rather than a co-plaintiff, the appellant contends that "Harry Stein was expected to testify for [Williams] and did not take the position of Appellant that [the] funds sought should be transferred to the Estate."

Williams claims that "[t]his matter was properly dismissed because Appellant is not the real party in interest and does not have standing to bring this lawsuit." Accordingly, Williams disagrees with the appellant's interpretation of *Tribull*, arguing that the present case is distinguishable because: (1) *Tribull* involved a suit in equity, not an action based in law; (2) there is no evidence in the present case that the personal representative refused or

was unwilling to file suit; (3) the Estate was closed by the time the appellant's action commenced; and (4) "*Tribull* only holds that a legatee [like the appellant] may bring an action against another legatee, not a third party [non-beneficiary like Williams]." Williams argues that "Appellant made no reasonable effort to rectify the lack of the real party in interest[, *i.e.*, the Estate,] after Appellee's objection in September of 2014." Therefore, Williams asserts that dismissal is the appropriate remedy under Md. Rule 2-201.

In addition, Williams contends that dismissal was appropriate because the only "legal basis for a beneficiary to bring assets into an estate if the personal representative refused to do so" is to petition the Orphan's Court to remove the personal representative for failure to perform a material duty under Md. Code Ann, Est. & Trusts § 6-306.

Williams also addresses the possibility that the circuit court granted the Motion to Strike or Dismiss the Complaint on grounds that relate to the appellant's failure to add the Estate as a party within the scheduling order deadline. She argues, quoting *Tobin v. Marriott Hotels, Inc.*, 111 Md. App. 566, 573 (1995), that "courts have a right to insist on at least substantial, if not strict, compliance with their scheduling orders." "In the present case," Williams asserts, "Appellant did not demonstrate any substantial compliance with the court ordered headline to join additional parties[,] . . . [which was] more than one year prior to the filing of the Third Amended Complaint." Furthermore, Williams contends that "the non-joinder exception does not apply to the present case" because, first and foremost, the appellant lacks standing to sue on behalf of the Estate. However, even if the appellant does have standing, Williams argues that the exception still would not apply because one

of the primary purposes of the non-joinder requirement—to prevent multiplicitous litigation—is not met.

Williams advances a number of additional arguments that are unrelated to the appellant's standing to sue or failure to add the Estate as a party within the scheduling order deadline. We shall address these arguments only briefly. First, she asserts that the "Third Amended Complaint was properly stricken because . . . [it] brought an action against [an Estate and] a personal representative that did not legally exist." Second, she contends that the Third Amended Complaint is barred by release due to the fact that the appellant, in writing, declared her inheritance fully paid and satisfied on February 19, 2013. Third, Williams argues that "Appellant's claims are barred by estoppel and laches." Finally, Williams asserts that the "Third Amended Complaint failed to state a claim upon which relief can be granted because . . . [allegations of undue influence are] not proper for declaratory judgment."

B. Varying Standards of Review

We have explained that the decision to grant or deny a motion to strike an amended complaint is

> "within the sound discretion of the trial court." *First Wholesale Cleaners, Inc. v. Donegal Mut. Ins. Co.,* 143 Md. App. 24, 41, 792 A.2d 325 (2002) (citations omitted). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court[ ] . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court [ ] . . . or when the ruling is violative of fact and logic." *Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC,* 388 Md. 1, 28, 878 A.2d 567

> (2005) (citations and internal quotation marks omitted) (alterations and omissions in original).

Bacon v. Arey, 203 Md. App. 606, 667 (2012).

However, we apply a different standard of review to a grant or denial of a motion to dismiss a complaint:

> In deciding whether to grant a motion to dismiss a complaint, a court is to assume the truth of the factual allegations of the complaint and the reasonable inferences that may be drawn from those allegations in the light most favorable to the plaintiff. In reviewing a circuit court's decision to dismiss a complaint, an appellate court applies the same standard and assesses whether that decision was legally correct. Thus, we accord no special deference to the Circuit Court's legal conclusions.

Heavenly Days Crematorium, LLC v. Harris, Smariga & Associates, Inc., 433 Md. 558, 568 (2013).

C. Analysis

On June 9, 2015, a hearing was held on Williams' Motion to Strike, or in the Alternative, Motion to Dismiss Plaintiff's Third Amended Complaint for Declaratory Judgment (referred to *supra* and *infra* as the "Motion to Strike or Dismiss the Complaint"). During the hearing, the trial judge heard arguments ranging from why the Third Amended complaint should be stricken on procedural grounds to why it should be dismissed for, among other things, failure to state a claim upon which relief can be granted. At the conclusion of the hearing, the court stated:

> All right. Thank you, counsel.

> I'm glad everything – it's certainly been a well prepared case.
>
> I will read *Tribull* and you'll get a ruling within the next two days.

However, despite the court's pronouncement that it would "read *Tribull*" before making its ruling, the record of the hearing is insufficient to ascertain whether the court's decision would ultimately be based on its reading of that case. After all, a number of other issues, including the violation of the scheduling order deadline, were argued before the parties got around to addressing *Tribull*. Therefore, the fact that the court indicated that it would "read *Tribull* and . . . get a ruling [out] within the next two days" does not show, one way or the other, what effect the Court of Appeals' 1956 opinion had on the disposition of the Motion to Strike or Dismiss the Complaint.

Later in the day on June 9, 2015, the court issued its written Order. The Order simply states that

> UPON CONSIDERATION of Defendant's Motion to strike, or in the Alternative, Motion to Dismiss Plaintiff's Third Amendment to Complaint for Declaratory Judgment (Paper #47000), and Plaintiff's response thereto, a hearing having been held on June 9, 2015, it is this 9th day of June, 2015, by the Circuit Court for Baltimore County,
>
> ORDERED, that Defendant's Motion to Strike, or in the Alternative, Motion to Dismiss Plaintiff's Third Amendment to Complaint for Declaratory Judgment (Paper #47000) be and is hereby GRANTED, case dismissed as to all Defendants without leave to amend.

Thus, like the hearing record, the written Order provides no indication of the grounds upon which the Motion to Strike or Dismiss the Complaint was granted.

In certain contexts, the grounds upon which the circuit court grants a motion are of no consequence. For example, when the court grants a straightforward motion to dismiss, "[w]e will affirm the circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised." *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 174 (2015) (internal quotations and citations omitted). The Motion to Strike or Dismiss the Complaint, however, was not a straightforward motion to dismiss. Instead, it was an alternative motion that would require different standards of review to be applied depending on whether the primary or alternative relief was granted, *i.e.*, the abuse of discretion standard of review would apply if the motion was granted for violation of the scheduling order, while the *de novo* standard of review would apply if the motion was granted for substantive legal reasons.

We find guidance from two of our previous cases in which we dealt with alternative motions like the one in the present case that were granted on unclear grounds. In *Pope v. Bd. of Sch. Comm'rs of Baltimore City*, 106 Md. App. 578, 589 (1995), we noted, as an initial matter, that "the record is unclear regarding whether the trial judge granted a motion to dismiss or granted a motion for summary judgment." *Id.* at 589. We went on to explain that "[t]he nature of the trial judge's ruling, of course, affects the appropriate standard of review to be followed in this appeal," and that therefore, "it is necessary to determine what the trial court actually did." *Id.* at 590. Ultimately, the following examination of the trial court's written order allowed us to proceed with our analysis:

> We conclude from the record and the trial judge's written order that the trial judge granted a motion to dismiss on the first count for failure to state a cause of action. We reach this conclusion because it is fairly evident from its written order that the trial court decided that, assuming the truth of the facts as alleged in the first count of appellant's complaint, the complaint does not state a claim upon which relief can be granted. *See Hrehorovich* [*v. Harbor Hosp. Crt., Inc.*], [93 Md. App.772,] 781–83, 614 A.2d 1021 (1992).
>
> A fair review of the record and the trial judge's written order indicates that the trial judge granted a motion for summary judgment on the second count. We reach this conclusion because the trial court looked beyond the pleadings to the facts as established in *Pope v. BTU,* and determined that judgment against appellant must be granted. In other words, because it considered matters outside the pleadings, the court was deciding a motion for summary judgment. *Id.*

Pope, 106 Md. App. at 590.

Likewise, in *Boyd v. Hickman*, 114 Md. App. 108 (1997), we recognized that "[a]s a preliminary matter, we must determine which [part of the] motion [to dismiss, or in the alternative, motion for summary judgment] was actually granted." *Id.* at 117. Again, we acknowledged that the applicable standard of review was dependent upon the grounds relied upon by the trial court. *Id.* We eventually concluded that

> [a]lthough the circuit court's memorandum opinion stated that it granted the defendants' "motion to dismiss," the circuit court clearly considered the affidavits and other materials submitted by the defendants. For example, the circuit court relied on Sgt. McKendrick's affidavit to conclude that Task Force members found enough drugs in Ms. Wisner's possession to indicate that a sale was contemplated. The circuit court also relied on the affidavit and other materials to conclude that the Task Force had corroborated evidence that Ms. Wisner sold drugs from and transported drugs in Ms. Boyd's car. Moreover, extrinsic evidence showed that Ms. Wisner was

> subsequently convicted of a felony drug offense arising from the May 29 arrest. Therefore, the circuit court's consideration of matters outside the pleadings rendered its decision a grant of a motion for summary judgment.

Id. at 118. Having determined which motion was actually granted, we were then able to, once again, proceed with our analysis. *Id.*

As *Pope* and *Boyd* make clear, upon review of alternative motions, it is essential to know which motion was actually granted. This is especially true where the alternative motions correspond to different standards of review. In both *Pope* and *Boyd*, we were able to look at the trial court's written order to determine which motion was actually being appealed from. However, in the case at bar, neither the hearing record nor the trial court's written Order provides any indication as to which of the two motions —the motion to strike or the motion to dismiss— was granted. The vagueness of the trial court's decision creates appealability problems before this Court.

For the foregoing reasons, we hereby vacate the judgment of the circuit court. On remand, the court shall reenter judgment in such a way that it is evident which of the two alternative motions was granted.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED FOR REENTRY OF JUDGMENT CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.