

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0766

September Term, 2015

SHERRY RAY EVELAND

v.

LEONARD E. WILSON, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JAMES CHARLES

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: August 17, 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.

The instant case concerns an ongoing dispute over the will and estate of James R. Charles. Sherry Ray Eveland, appellant, is Charles's daughter and one of the named legatees under his will. Leonard Wilson, appellee, is the personal representative of Charles's estate. Over the course of the proceedings before the Orphans' Court for Cecil County, appellant has filed a petition to caveat and several motions in which, among other things, she made various allegations of fraud against appellee. One of the motions that appellant filed was a motion to transfer the case out of the Orphans' Court for Cecil County, which the court granted under the mistaken belief that appellee had consented to the venue change. Appellee responded by filing a motion to vacate that ruling. The court postponed the first scheduled hearing on the motion to vacate, and issued a stay of the Order for Removal. Nearly a month later, the court held a hearing on the motion to vacate and granted it. Appellant, proceeding *pro se*, appealed both the order postponing the hearing and issuing a stay, and the order granting the motion to vacate.

On appeal, appellant presents five questions for our review, which we have rephrased and condensed into two:¹

1. Did the orphans' court err by postponing the hearing on the motion to vacate and issuing a stay of the Order for Removal?
2. Did the orphans' court err by vacating the Order for Removal?

¹ Appellant's brief raises many issues and arguments; however, we need not address them, because, as explained *infra*, we have no jurisdiction to render relief on the interlocutory orders subject to the instant appeal.

We do not reach the merits of appellant’s questions, because, as discussed below, the instant appeals are taken from non-appealable interlocutory orders and thus must be dismissed.

BACKGROUND

James R. Charles died on August 29, 2014. On September 3, 2014, a Petition for Probate was filed for his estate in the Orphans’ Court for Cecil County. On the same day, appellee was appointed as the personal representative of the estate. Charles’s will left his entire estate to be divided equally among his three children, which included appellant.

On February 20, 2015, appellant filed a petition to caveat, alleging that her father’s will was a forgery. On March 4, 2015, appellee responded by filing a motion to dismiss the petition to caveat. According to the record before this Court, neither the petition to caveat nor the motion to dismiss have been ruled on by the orphans’ court.

On March 16, 2015, appellant filed a *pro se* motion to remove the action from the Orphans’ Court for Cecil County. In her motion, appellant claimed that she could not receive a fair hearing in any court located on the Eastern Shore of Maryland. On April 3, 2015, the orphans’ court granted the removal without a hearing after all three orphans’ court judges recused themselves from the case. The Order for Removal issued by the court transferred the case to the Orphans’ Court for Baltimore City.

On April 13, 2015, appellee filed a motion to vacate the Order for Removal pursuant to Maryland Rule 2-534. In his motion, appellee argued that the transfer was a venue issue, and that appellant's allegations did not constitute grounds for a transfer of venue under Rule 2-327(c). On May 22, 2015, appellant filed both a motion to postpone the hearing, because she did not have counsel, as well as a motion to strike the hearing, because the Orphans' Court for Cecil County no longer had jurisdiction.

On May 28, 2015, the court held a hearing on appellee's motion to vacate. During the hearing, the court explained to the parties that it had originally granted the removal because it believed that both parties had consented to it. The court discussed this misunderstanding with appellant's counsel, who had been retained by appellant on the day of the hearing:

[APPELLANT'S COUNSEL]: And if I understand, Your Honor, correctly what you're saying is that after you made your Order you received additional information that you didn't have prior to the Order?

THE COURT: Well, I was under the impression that—that everybody agreed to this.

[APPELLANT'S COUNSEL]: Okay.

THE COURT: Um, and that everybody agreed to Baltimore City.

[APPELLANT'S COUNSEL]: And that impression was based on the failure of the Personal Representative to file the appropriate opposition?

THE COURT: Nope, no it was based upon an email I received from the Register of Wills or their office.

[APPELLANT’S COUNSEL]: And is that email a part of the file?

THE COURT: I do not know.

[APPELLANT’S COUNSEL]: Okay.

THE COURT: If it was part of the file and based on that I prepared an Order believing that it was pursuant to the agreement of the parties. Issued the Order, the Court did nothing else. Next thing I know I received the Motion by [appellee’s counsel], filed, asking that my previous Order to Remove be vacated or, you know, the Motion to Vacate/Motion to Reconsider. That was when I first became aware that there was an objection to the removal.

The orphans’ court then postponed the hearing on appellee’s motion to vacate to allow appellant’s newly retained counsel to fully prepare. The court also issued a stay of its Order for Removal pending the decision on the motion to vacate. On June 17, 2015, appellant filed a motion to strike the upcoming hearing for lack of jurisdiction. On June 19, 2015, appellant filed a notice of appeal of the May 28, 2015 postponement order, also on the basis of lack of jurisdiction.

On June 24, 2015, the orphans' court held a hearing on appellee's motion to vacate.² Appellant appeared at the hearing *pro se*, her attorney having withdrawn from the case in the interim. Appellee's counsel argued to the court that the removal of the case to the Orphans' Court for Baltimore City was improper, because all of the parties and property were located in Cecil County. Appellee's counsel further asserted that, even if the Cecil County Orphans' Court judges all recused themselves, a circuit court judge for Cecil County could sit as an orphans' court judge. Appellant claimed that removal was proper, because she could not get a fair trial in Cecil County. At the conclusion of the hearing, the court vacated the Order for Removal. The court determined that, because all three orphans' court judges had recused themselves, the appropriate remedy under Section 2-106(i) of the Estates & Trusts Article was to have the Chief Judge of the Court of Appeals appoint an orphans' court judge from another county to serve.

On June 30, 2015, appellant filed a motion to strike the June 24, 2015 order on the grounds that the case was already on appeal, thus making the court's order void. On the same day, appellant filed a notice of appeal of the court's June 24, 2015 order.

² Although some of the pleadings and documents in the record make reference to the Circuit Court for Cecil County, all of the orders relevant to the instant appeals are orders of the orphans' court.

DISCUSSION

In the instant case, appellant filed two separate appeals. First, she filed an appeal of the orphans' court's May 28, 2015 order postponing the hearing on the motion to vacate and staying its Order for Removal. After the court granted the motion to vacate on June 24, 2015, appellant filed a second appeal. Before this Court can address the lower court's rulings on the merits, we must determine whether these orders are appealable.

I. Appeal of the May 28, 2015 Order

The orphans' court initially held a hearing on appellee's motion to vacate on May 28, 2015. At that hearing, the court explained that it had mistakenly granted the removal to the Orphans' Court for Baltimore City based on the belief that both parties had agreed to it. Appellant's counsel informed the court that she had just been retained by appellant that day, and requested a postponement of the hearing in order to fully prepare for the motion to vacate. Appellee objected to postponing the hearing. After the court informed the parties that it would reschedule the hearing to allow appellant's counsel time to prepare, appellee asked that the court also issue a stay of the Order for Removal. The court agreed and issued an order postponing the motions hearing until June 24, 2015, and granting a stay of the Order for Removal. Appellant appealed that order on June 19, 2015, arguing in the notice of appeal that the court did not have jurisdiction to hear this case, because jurisdiction had been transferred to the Orphans' Court for Baltimore City.

The right to appeal is governed by statute, and the Maryland Code provides that

a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law.

Md. Code (2006, 2013 Repl. Vol.), § 12-301 of the Courts & Judicial Proceedings (II) Article (“CJP”). “Thus, an appeal generally must be taken from a final judgment; the decision must be so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.” *Quillens v. Moore*, 399 Md. 97, 115 (2007) (citations and internal quotation marks omitted). “An order that is not a final judgment is an interlocutory order and ordinarily is not appealable.” *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 566 (2010) (citation and internal quotation marks omitted).

The May 28, 2015 order is not an appealable order, because it is not a final judgment.³ The order simply postponed the hearing on the motion to vacate and stayed the Order for Removal until the motion could be ruled upon. The order did not “determine and conclude rights involved,” nor was appellant denied the ability to further defend her “rights and interests.” *See Quillens*, 399 Md. at 115. Indeed, the order did not decide any rights at all.

³ Nor is the May 28, 2015 order an interlocutory order from which an appeal is expressly authorized by statute. *See* Md. Code (2006, 2013 Repl. Vol.), § 12-303 of the Courts & Judicial Proceedings (II) Article.

Furthermore, the postponement was requested by appellant's own counsel and objected to by appellee. Thus the May 28, 2015 order is not subject to appellate review.

II. Appeal of the June 24, 2015 Order

As an initial matter, there is still an outstanding motion that has yet to be ruled upon by the orphans' court. On June 30, 2015, appellant filed a motion to strike the June 24, 2015 order as void. In the motion, appellant argued that the orphans' court had no authority to vacate the Order for Removal, because the case was already on appeal after the filing of appellant's notice of appeal of the May 28, 2015 order. The motion to strike also was filed on the same day that appellant filed her appeal of the June 24, 2015 order. Accordingly, and for that reason alone, appellant's appeal of the June 24, 2015 order is premature. *See Pickett v. Noba, Inc.*, 114 Md. App. 552, 556 (1997) ("When parties file timely motions under Rules 2-533 or 2-534, the time the parties have to note an appeal is suspended until after the motion is decided."), *cert. denied*, 351 Md. 663 (1998); *see also Unnamed Atty. v. Attorney Grievance Comm'n*, 303 Md. 473, 486 (1985) ("[W]hen a motion to alter or amend an otherwise final judgment is filed within ten days after the judgment's entry, the judgment loses its finality for purposes of appeal.").

Nevertheless, even if the motion to strike had been ruled upon and denied, the June 24, 2015 order vacating the Order for Removal would still not be an appealable order. In the instant case, appellant filed a motion to have the case removed from the Orphans' Court for Cecil County. Appellant's motion was titled "Motion and Notice for Removal of

Action from All Courts on the Eastern Shore of Maryland.” Such motion was granted by the orphans’ court by issuing an Order for Removal transferring the case to the Orphans’ Court for Baltimore City.

Although it was never explicitly referred to as such in the pleadings, the Order for Removal was essentially a transfer of venue, from one court with jurisdiction, the Orphans’ Court for Cecil County, to another, the Orphans’ Court for Baltimore City. *See Sigurdsson v. Nodeen*, 180 Md. App. 326, 343 (2008) (“Venue does not concern the power of a court to decide an issue. It concerns the place, among courts having jurisdiction, that an action will be litigated.”), *aff’d*, 408 Md. 167 (2009). By vacating its Order for Removal that had granted the change of venue, the orphans’ court effectively denied the change of venue. Maryland courts have addressed the issue of whether appeals may be taken from the denial of a change of venue. The Court of Appeals has explained:

[A]n order putting an appellant out of a particular court is also a final judgment. It follows that an order transferring a case from one circuit court to another, for proper venue or for a more convenient forum, and thereby terminating the litigation in the transferring court, is a final judgment and thus immediately appealable. At the same time, **an order denying a motion to transfer is not an immediately appealable final judgment, because the litigation may continue in the court issuing the order.**

Brewster v. Woodhaven Bldg. & Dev., Inc., 360 Md. 602, 615–16 (2000) (emphasis added).

Thus “the grant of a change of venue is immediately appealable; but the denial of a change is not.” *Payton-Henderson v. Evans*, 180 Md. App. 267, 282 (2008).

The orphans' court's June 24, 2015 order vacating the Order for Removal was a denial of a change of venue. Accordingly, such order is a non-appealable interlocutory order and cannot be reviewed by this Court.

**APPEALS DISMISSED; APPELLANT TO
PAY COSTS.**