

Orphans' Court for Montgomery County  
Estate No.: W108722

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2168

September Term, 2022

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IN RE: THE ESTATE OF RAYMOND  
FRIEDMAN

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Nazarian,  
Zic,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: October 2, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises out of a dispute between a sister, Claire Bennett, and brother, Alan Friedman, over the estate of their father, Raymond Friedman (the “Decedent”). On January 27, 2023, a senior judge (meaning a retired judge authorized for recall service), sitting as a Judge of the Orphans’ Court for Montgomery County, dismissed Ms. Bennett’s petition to caveat the Decedent’s Last Will and Testament (the “Will”) as untimely. On appeal, Ms. Bennett argues: (1) the senior judge lacked authority to preside as a Judge of the Orphans’ Court for Montgomery County; and (2) the Orphans’ Court erred in dismissing her petition to caveat. We conclude that the issue of the senior judge’s authority is moot and, on the merits, affirm the Orphans’ Court’s dismissal of Ms. Bennett’s petition to caveat.

## I. BACKGROUND

The Decedent died on August 12, 2021, domiciled in Montgomery County, and was survived by two children, Ms. Bennett and Mr. Friedman. Ms. Bennett resided in San Marcos, California, and Mr. Friedman resided near the Decedent in Montgomery County. In the Will, dated July 21, 2020, the Decedent gave six thousand dollars in trust for the benefit of Ms. Bennett and left the balance of his estate to Mr. Friedman. On November 5, 2021, Mr. Friedman filed a petition for regular estate administration with the Montgomery County Register of Wills in which he estimated the value of the estate at \$876,200.00. On the same day, Mr. Friedman also submitted the Will to the Register of Wills, and the court appointed him personal representative of the estate.

The Register of Wills mailed a copy of the notice appointing Mr. Friedman as

personal representative (the “Notice”) to Ms. Bennett. The Notice advised her that the deadline for filing any objections to the probate of the Decedent’s estate was May 5, 2022. The Notice also provided that “[f]urther information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney.” On November 29, 2021, the Register of Wills certified that the Notice was mailed to Ms. Bennett at her residential address in San Marcos, California. And on December 6, 2021, the publisher for the Washington Jewish Week<sup>1</sup> filed proof of publication with the Register of Wills, certifying that the Notice had been published for three consecutive weeks beginning on November 18, 2021.

On February 4, 2022, and under Maryland Rule 6-107(a),<sup>2</sup> Mr. Friedman’s attorney requested a thirty-day extension to file the inventory and information report because he required additional time to compile the necessary information. The Register of Wills granted the request and set the new filing deadline as March 7, 2022. On March 15, 2022,

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<sup>1</sup> According to the proof of publication, the Washington Jewish Week is a newspaper in the County/City of Montgomery, Maryland.

<sup>2</sup> Maryland Rule 6-107(a) permits the Orphans’ Court or the Register of Wills to extend certain deadlines, including the deadline for filing an inventory and an information report:

**By Request to Register or Court.** The court or the register, upon written request, may extend to a specified date the time for filing an inventory (Rule 6-402), an information report (Rule 6-404), an application to fix inheritance tax on non-probate assets (Rule 6-405), or an account (Rule 6-417). The request may be made ex parte.

Mr. Friedman’s attorney sought another extension because Mr. Friedman was in the process of having the real property and tangible personal property of the estate appraised. Mr. Friedman mailed a copy of his petition to all persons interested in the estate, including Ms. Bennett, and she did not oppose his request for additional time. The Orphans’ Court granted the petition and gave Mr. Friedman until May 13, 2022 to file the inventory and information report.

Although she argues that Mr. Friedman never responded to several earlier requests to provide her with a copy of the Will, Ms. Bennett concedes nevertheless that she received the Will from Mr. Friedman’s attorney on April 8, 2022. On April 27, 2022, she retained an attorney to file a petition to caveat the Will. Ms. Bennett claims that her attorney filed a petition to caveat on May 5, 2022, but then withdrew it without her authority or knowledge<sup>3</sup> before it was docketed by the Register of Wills and instead filed a petition to extend the caveat filing deadline.<sup>4</sup> The petition asked the court to grant an extension “in order to complete due diligence required to determine if a Petition to Caveat should be filed.” Mr. Friedman opposed Ms. Bennett’s request for the extension of time by moving to dismiss the petition. The following day, Mr. Friedman filed the inventory and information report, which listed the appraised value of the estate as \$1,066,300.63, an increase of \$190,100.63

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<sup>3</sup> A second attorney had been retained by Ms. Bennett for a hearing held on January 27, 2023. That attorney proffered that after Ms. Bennett learned that the first attorney had withdrawn her petition to caveat, she “implored upon [first attorney] to file the motion to extend the date.”

<sup>4</sup> The Orphans’ Court docket does not reflect that a petition to caveat was ever filed and then withdrawn.

from the value he provided when he petitioned to open the estate.

On May 27, 2022, an incumbent judge of the Circuit Court for Montgomery County, sitting as the Orphans' Court, signed an order granting Ms. Bennett an extension of time until June 27, 2024 to file a petition to caveat the Will. The order did not contain any findings and stated that it was premised “[u]pon consideration of the Petition to Extend Caveat Filing Deadline . . .” On June 24, 2022, Ms. Bennett filed a petition to caveat the Will, alleging that Mr. Friedman asserted undue influence over the Decedent and that the Decedent lacked testamentary capacity at the time his Will was executed.

Mr. Friedman filed a motion to dismiss the caveat on July 15, 2022, arguing that it was untimely and requesting a hearing. On January 27, 2023, the case came before a senior judge, sitting as the Orphans' Court for Montgomery County, to hear Mr. Friedman's motion to dismiss the petition to caveat. After hearing from the parties, the senior judge found:

based on the undisputed facts here, that there was sufficient time to file the caveat, after the receipt of the will, even if I don't hold the sister to the six-month period. She did have 30 days. There apparently was a hang-up with her attorney, and [sic] which is unfortunate. What took place there, I can't even begin to guess upon. But I'm satisfied that there was not a substantial irregularity, nor was there a fraud perpetrated.

The senior judge vacated the May 27, 2022 order extending the caveat filing deadline, dismissed Ms. Bennett's caveat petition with prejudice, and granted Mr. Friedman's motion to dismiss. This timely appeal followed. We include additional facts below as necessary.

## II. DISCUSSION

Ms. Bennett presents two questions<sup>5</sup> on appeal, which we have rephrased: *first*, whether the senior judge had authority to preside as a judge of the Orphans' Court when his Senior Judge Designations did not assign him to the Orphans' Court specifically; and *second*, whether the Orphans' Court erred in dismissing the petition to caveat. We conclude that the first question is moot and affirm the order dismissing Ms. Bennett's petition to caveat as untimely.

### **A. The Question Of the Senior Judge's Authority To Preside As A Judge Of The Orphans' Court For Montgomery County Is Moot.**

Under the Maryland Constitution, Montgomery County is one of three counties that has circuit court judges sit in rotation as the Orphans' Court for that county rather than

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<sup>5</sup> Ms. Bennett phrased her Questions Presented as follows:

1. As a matter of first impression, did [Senior Judge] have authority to preside as an Orphans' Court Judge where his Senior Judge Designation did not specifically designate him to preside as a Judge in the Orphans' Court for Montgomery County?
2. Did the Orphans' Court err in dismissing the Petition to Caveat?

Mr. Friedman phrased his Questions Presented as follows:

1. Where the presiding Judge was appointed to sit as a retired circuit court judge in 2021 and a *nunc pro tunc* order was issued in 2023 authorizing the judge to sit on the Orphans' Court, did [Senior Judge], a retired circuit court judge sitting as the Orphans court for Montgomery County, lack authority to issue an order dismissing appellants' untimely Petition to Caveat?
2. Where appellant filed her petition to caveat after the six month deadline set forth in Md. Code, § 5-207(a)(1) of the Estates and Trusts Article, did the Orphans' Court err when it dismissed the petition to caveat as untimely?

electing separate Orphans’ Court judges. Maryland Const. Art. IV, § 20(b).<sup>6</sup> When circuit court judges sit in (and as) the Orphans’ Court, they “have and exercise all the power, authority and jurisdiction which the present Orphans’ Courts now have and exercise . . . .”

*Id.* The Constitution provides further that the Chief Justice of the Supreme Court of Maryland may assign a retired judge of the Circuit Court for Montgomery County to sit as a judge of the Orphans’ Court for Montgomery County:

(a)(1) Except as provided in paragraph (2) of this subsection, any former judge, except a former judge of the Orphans’ Court, may be assigned by the Chief Justice of the Supreme Court of Maryland, upon approval of a majority of the court, to sit temporarily in any court of this State, except an Orphans’ Court, as provided by law.

(2)(i) A retired judge of the Circuit Court for Montgomery County that sits as the Orphans’ Court for Montgomery County may be assigned by the Chief Justice of the Supreme Court of Maryland, upon approval of a majority of the Supreme Court of Maryland, to do an act that a judge of the Orphans’ Court for Montgomery County is authorized to perform.

Md. Const. art. IV, § 3A.

Ms. Bennett doesn’t dispute that senior circuit judges can be designated to sit as judges of the Orphans’ Court for Montgomery County. Instead, she contends that the senior judge in this case lacked authority to preside in this case because his Senior Judge Designations, dated January 15, 2021 and March 24, 2021, did not assign him explicitly to sit as the Orphans’ Court for Montgomery County.

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<sup>6</sup> Howard and Harford Counties are the others. *See* Md. Const. art. IV, § 20(b) (“The judges of the Circuit Courts for Howard, Montgomery, and Harford Counties shall each, alternately and in rotation and on schedules to be established by those judges, sit as an Orphans’ Court for their County . . . .”).

The terms of the senior judge’s assignment were what they were at the time, but the question of the judge’s authority to sit as a judge of the Orphans’ Court is now moot. “A case is moot when there is ‘no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.’” *State v. Dixon*, 230 Md. App. 273, 277 (2016) (quoting *Suter v. Stuckey*, 402 Md. 211, 219–20 (2007)). On August 14, 2023, the Chief Justice issued a Senior Judge Designation stating that the senior judge who presided in this case, among other retired judges then in senior status, was assigned “to do any act that a judge of the Orphans’ Court for Montgomery County is authorized to perform . . . .”. This authorization was issued *nunc pro tunc* to the date of the senior judge’s initial certification and effective through June 30, 2024, the expiration of his then-current certification as a senior judge. That designation renders any question about the judge’s authority moot and we can move on to the merits.<sup>7</sup>

**B. The Orphans’ Court Did Not Err In Dismissing Appellant’s Petition to Caveat As Untimely.**

Ms. Bennett’s *second* contention is that the Orphans’ Court erred in dismissing her petition to caveat. She argues the caveat was timely based on the May 27, 2022 order, which granted her an extension of time to file, and that the order was permissible. Mr. Friedman argues that the senior judge, after hearing from the parties, did not err in vacating

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<sup>7</sup> Mr. Friedman argues as well that this issue wasn’t preserved because Ms. Bennett did not raise the issue in the Orphans’ Court and, independently of the August 14, 2023 Senior Judge Designation, because the senior judge was authorized by the prior Senior Judge Designations to sit as a judge of the Orphans’ Court for Montgomery County. Because we have determined that the issue is moot, we need not address the other arguments.



the order granting the extension, finding that “based on the undisputed facts here, . . . there was sufficient time to file the caveat, after the receipt of the will” and “there was not a substantial irregularity, nor was there a fraud perpetrated.” We review an Orphans’ Court’s interpretation and application of statutory provisions as an issue of law *de novo*. *Green v. Nelson*, 227 Md. App. 698, 707 (2016) (“We review a court’s interpretation of statutory provisions *de novo*.”); *Mayor of Balt. v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (“Where an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court’s conclusions are “legally correct” under a *de novo* standard of review.” (quoting *Schisler v. State*, 394 Md. 519, 535 (2006))).

Maryland testamentary law seeks to promote the prompt probate of wills and settlement of estates. *Green*, 227 Md. App. at 707 (citing *Carney v. Kosko*, 229 Md. 112, 118 (1962)). “Timely filed caveats further the purpose of testamentary law because the prompt resolution of will validity allows the personal representative to expeditiously settle the estate.” *Id.* at 709. The caveat procedure allows a party to contest a will if the party “believes that the will was not properly executed or that the will was procured by undue influence, fraud, or duress.” *Shealer v. Straka*, 459 Md. 68, 82 (2018) (citing *Green*, 227 Md. App. at 709). “Specifically, an interested party can file a petition to caveat contesting that validity of the will submitted to probate.” *Id.*

The issue here is whether Ms. Bennett’s petition to caveat was timely. Maryland Rule 6-431 tracks the time limit contained in the Maryland Estates and Trusts Article,

which directs that a caveat may be filed any time in the six months after the first appointment of a personal representative:

Regardless of whether a petition for probate has been filed, a verified petition to caveat a will may be filed at any time before the expiration of 6 months following the first appointment of a personal representative under a will, even if there be a subsequent judicial probate or appointment of a personal representative.

Md. Code (1974 2022 Repl. Vol.), § 5-207 (a)(1) of the Estates and Trusts Article (“ET”).

The statute “precludes the consideration of a belated caveat after a fixed lapse of time.”

*Durham v. Walters*, 59 Md. App. 1, 9 (1984). And the Maryland Rules forbid extensions of the time for filing a caveat:

Except as otherwise provided in this section, when these rules, an order of court, or other law require or allow an act to be done at or within a specified time, the court, upon petition filed pursuant to Rule 6-122 and for good cause shown, may extend the time to a specified date. *The court may not extend the time for filing a claim, a caveat, or a notice of appeal or for taking any other action where expressly prohibited by rule or statute.*

Md. Rule 6-107(b) (emphasis added). But there is a narrow exception: Rule 6-431(b)(2)

allows for an extension based on a finding of “fraud, material mistake, or substantial irregularity” in the probate proceedings:

Upon petition filed within 18 months after the death of the decedent, a person entitled to file a petition to caveat may request an extension of time for filing the petition to caveat on the grounds that the person did not have actual or statutory notice of the relevant probate proceedings, or that there was fraud, material mistake, or substantial irregularity in those proceedings. If the court so finds, it may grant an extension.

Md. Rule 6-431(b)(2).

Mr. Friedman argues that ET § 5-207(a)(1) and Maryland Rule 6-107(b) preclude the Orphans' Court from granting Ms. Bennett an extension of time. And although we acknowledge that Ms. Bennett could well feel misled by the Orphans' Court's order purporting to grant her an extension, Mr. Friedman ultimately is right that the court couldn't do so under these circumstances. "Section 5-207(a) clearly prohibits the filing of a caveat more than six months after the appointment of a personal representative." *Sherman v. Robinson*, 319 Md. 445, 449 (1990). Indeed, the six-month time bar imposed by ET § 5-207 divests the Orphans' Court of jurisdiction to consider a petition to caveat once six months have passed since the appointment of the personal representative. *Green*, 227 Md. App. at 714–15 ("[Section] 5-207(a) is a mandatory time bar to file a petition to caveat on the grounds, and, for that reason, the section divests the Orphans' Court of its jurisdiction after the passage of six months since the appointment of the personal representative.").

In *Green*, we affirmed the dismissal of a petition to caveat filed more than six months after the appointment of the personal representative because ET § 5-207 "makes clear that in a normal proceeding, i.e., one without mistake or irregularity, this requirement is immutable—even if there is a subsequent judicial probate or appointment of different personal representatives, a caveator has just six months to file a petition." *Id.* at 709; *see also Durham*, 59 Md. at 9 ("Section 5-207 divests the Orphan's Court of its jurisdiction to entertain a caveat filed after more than six months from the first appointment of a personal representative.").

From there, Ms. Bennett would need to establish either a lack of actual notice or “fraud, material mistake, or substantial irregularity” in the probate proceedings that could justify an extension of the Orphans’ Court’s jurisdiction under Md. Rule 6-431(b)(2). She argues that Mr. Friedman’s failure to file the inventory and information report with the Register of Wills on time, refusal to communicate with her after being appointed personal representative, and refusal to timely provide her with a copy of the Will all constitute substantial irregularities that support granting an extension of time under Md. Rule 6-431(b)(2). Mr. Friedman counters that Ms. Bennett’s assertions about his supposed lack of communication and refusals to mail her a copy of the Will do not rise to substantial irregularity or mistake in the probate proceedings and that her argument about the timeliness of the inventory and information report was not raised in the Orphans’ Court and is not preserved for appellate review. We agree with Mr. Friedman on both counts.

The notice theory is dispatched easily. On May 5, 2022, the last day a caveat was permitted to be filed, Ms. Bennett’s former attorney filed a petition to extend the caveat filing deadline, and the petition acknowledged that Ms. Bennett had received a copy of the Will on April 8, 2022 and requested a thirty-day extension “in order to complete due diligence required to determine if a Petition to Caveat should be filed;” The remaining question, then, is whether Ms. Bennett could establish fraud, material mistake, or substantial irregularity in the proceedings that could support an otherwise prohibited extension. She cannot.

To the extent Ms. Bennett seeks to argue that Mr. Friedman’s (authorized) late

filings of the inventory and information report justify an extension of her time to petition to caveat, that argument isn't preserved. During the hearing on January 27, 2023, Ms. Bennett's attorney proffered that Mr. Friedman's refusal to communicate with Ms. Bennett, and his refusal to provide her with a copy of the Will prior to April 8, constituted grounds to extend the caveat filing deadline. But counsel conspicuously did not argue that Mr. Friedman had filed the inventory and information report late. To the contrary, after arguing that Mr. Friedman had failed to communicate with Ms. Bennett or to provide her the Will, the senior judge asked Ms. Bennett's attorney if there were any other grounds for extending the caveat filing deadline:

[THE COURT]: Well, aside from not responding, what other detrimental acts do you suggest that he took?

[APPELLANT'S COUNSEL]: Those are the ones that I, those are the ones that I am aware of.

Likewise, as Mr. Friedman observed in his brief, Ms. Bennett did not raise any other arguments in any of her filings in the Orphans' Court. On appeal, we generally only consider issues that "plainly appear[] by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). "The 'primary purpose of Rule 8-131(a) is to ensure fairness for all parties in a case . . .,' which is accomplished by 'requir[ing] counsel to bring the position of their client to the attention of the lower court'" so that the trial court has an opportunity to rule upon the issues presented. *Romano & Mitchell v. LaPointe*, 146 Md. App. 440, 456 (2002) (quoting *Davis v. DiPino*, 337 Md. 642, 647–48 (1995)). Because Ms. Bennett didn't argue that the inventory and information report were untimely,

we decline to exercise our discretion to provide such a review.

From there, Ms. Bennett relies on three cases in which the circumstances justified extensions to allow caveat petitions beyond the normal six-month time period. However, as was the case in *Green*, “each case is distinguishable,” and fails to “provide sufficient justification for us to depart from the plain language of ET § 5-207 in this case.” 227 Md. at 715.

In *Pellegrino v. Maloof*, 56 Md. App. 338 (1983), the dispute between the parties centered primarily on an income-producing property that had been passed down through generations of the Pelligrino family. *Id.* at 342. The sons of the decedent alleged that the personal representative of the estate had misled them into believing that their father devised a substantial interest in the property to them through an intentionally ambiguous provision of the will and, as a result, the sons did not contest the will within the six-month time period. *Id.* at 343–44. We agree with Mr. Friedman that the facts in this case are readily distinguishable from *Pellegrino*. The personal representative in *Pellegrino* was an attorney who also drafted the decedent’s will with “an apparent substantial ambiguity . . . .” *Id.* at 349. The personal representative there committed fraud—he “implicitly reassured the sons of the decedent about the subject matter of the ambiguous provision” and then “declined to respond to correspondence predicated on what he subsequently determined to be a mistaken understanding of the ambiguity . . . .” *Id.* We found that the personal representative’s failure to file a timely inventory describing the Pellegrino property as an asset of the estate, “when added to the other cumulative circumstances in the context of the

allegations,” constituted a “material mistake” or “substantial irregularity” in the probate proceedings. *Id.* Here, the issues do not involve a deceptive provision in the Will—the Will provides unambiguously what Ms. Bennett will (and won’t) receive.<sup>8</sup> Moreover, it is undisputed that Ms. Bennett had a copy of the Will on April 8, 2022 and, as the Orphans’ Court found, that “there was sufficient time to file the caveat, after the receipt of the will.”

In another case, the sole heir to the estate resided in Germany, did not speak English, and denied ever receiving notice of the petition to probate. *Market v. Beatley*, 84 Md. App. 594, 596–97 (1990). *Market*, unlike this case, involved a lack of notice of the probate proceedings. *Id.* at 597. We held there that, “[t]o be charged with actual notice, a party must have notice that can reasonably be acted upon within the limitations period.” *Id.* at 602. In this case, Ms. Bennett had actual notice of the probate proceedings and she has not argued otherwise.

Finally, Ms. Bennett invokes *Sole v. Darby*, 52 Md. App. 218 (1982), in which the personal representative sent notice of the probate proceeding to the heir informing her that she had six months to file a petition the caveat but listed a date three days after the six-month period expired. *Id.* at 220. We held “that under those circumstances, where the personal representative gave the caveator an incorrect notice document upon which she

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<sup>8</sup> The Decedent’s Will states in pertinent part:

7.01. I give the sum of six thousand Dollars (\$6,000.00) to  
**Claire E. Bennett.**

7.02 I give the balance of my residuary estate to **Alan D.  
Freidman.**

relied to her detriment, rigid adherence to the terms of ET § 5-207 was not mandated.” *Green*, 227 Md. at 715 (citing *Sole*, 52 Md. App. at 224). But the notice issues present in *Market* and *Sole* that justified a departure from ET § 5-207 are not present here. The Register of Wills in this case filed a certificate of service on November 29, 2021, attesting that they mailed a copy of the Notice to Ms. Bennett at her correct address. Ms. Bennett has never denied receiving the Notice, and the Notice contained the correct date by which the deadline to file a petition to caveat the Will expired.

Apart from Ms. Bennett having actual notice of the probate proceedings, there was, as the Orphans’ Court found, sufficient time to file the caveat after she received the Will on April 8, 2022. The facts of this case cannot support a finding of fraud, material mistake, or substantial irregularity in the probate proceedings that would justify a departure from ET § 5-207, and the Orphans’ Court did not err in dismissing the petition to caveat as untimely.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**