

The Orphans' Court for Montgomery County
Case No. W65879

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2178

September Term, 2023

IN RE: THE ESTATE OF ADELLE SCOTTI
COLACHICCO

Friedman,
Kehoe, S.,
Kenney, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 3, 2025

* 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).

The Appellant, James W. Colachicco (“Mr. Colachicco”), filed a Request for Judicial Probate in the Orphans’ Court for Montgomery County (“Orphans’ Court”). The Orphans’ Court denied, with prejudice, Mr. Colachicco’s request for judicial probate without holding a hearing, citing to Estates & Trusts § 5-103(c)(3) and Maryland Rule 6-111(c). Mr. Colachicco argues two errors on appeal. First, the Orphans’ Court erred in denying Mr. Colachicco’s request for judicial probate to open Ms. Adele¹ Scotti Colachicco’s (“Decedent”) estate and appoint him as personal representative. Next, he contends that the Orphans’ Court erred in denying Mr. Colachicco a hearing on the request for judicial probate. For reasons that we will outline, we reverse the judgment of the Orphans’ Court and remand for further proceedings.

I. Background

We will set forth such facts as are necessary to address the issues raised on appeal. Decedent died intestate on December 6, 2008, domiciled in Florida, and owning real property in Montgomery County, Maryland (“Maryland Property”). Decedent’s Maryland Property was owned by “Colachicco, James P. & A.”² Decedent was survived by her five children, including Rosemary Colachicco (“Ms. Colachicco”) and Mr. Colachicco.

¹ Mr. Colachicco misspelled Decedent’s name as “Adelle” in his notice of appeal to the Appellate Court of Maryland. However, we will use the correct spelling of Decedent’s name, “Adele” here.

² We discern that the subject property was owned as tenants by the entirety by James A. and Adele Colachicco. James having predeceased Adele, Adele became the sole owner of the subject property.

On May 22, 2010, the Probate Division of the Circuit Court for Lake County, Florida (“Florida Probate Court”) issued Letters of Administration providing that “[Ms.] Colachicco has been appointed personal representative of [Decedent’s estate] and has performed all acts prerequisite to issuance of Letters of Administration in the estate.” The Florida Probate Court declared Ms. Colachicco “duly qualified under the laws of the State of Florida to act as personal representative of [Decedent’s estate] with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of [Decedent]; to pay the debts of [Decedent] as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.”

On July 27, 2010, Ms. Colachicco, acting as personal representative of Decedent’s estate, filed an Application by Foreign Personal Representative to Set Inheritance Tax with the Register of Wills for Montgomery County, Maryland (“Register of Wills”). The record indicates that the billing for non-probate inheritance tax on Decedent’s Maryland Property was completed on August 20, 2010. The record also shows that the status of Decedent’s estate in Maryland is open.³ However, Ms. Colachicco passed away without taking action to distribute Decedent’s Maryland Property.

On August 21, 2023, Mr. Colachicco emailed the Register of Wills regarding Decedent’s Maryland Property and was notified that he should contact the Florida Probate

³ The record indicates that the status for the Maryland Property is open. However, it is unclear whether the Register of Wills closed the Maryland estate after Ms. Colachicco satisfied the inheritance tax payment on August 20, 2010, and reopened the estate upon Mr. Colachicco filing a regular estate petition for probate on November 15, 2023.

Court and request to be appointed as successor personal representative of Decedent's estate. The record does not reflect what steps, if any, Mr. Colachicco took to contact the Florida Probate Court.

On November 15, 2023, Mr. Colachicco filed a Regular Estate Petition for administrative probate, with supporting documents, requesting that the Register of Wills open an estate for Decedent's Maryland Property and appoint Mr. Colachicco personal representative of Decedent's estate. Upon the filing of that petition, the Register of Wills issued a New Proceedings Division Memorandum informing Mr. Colachicco that Decedent's estate has already been probated by the Florida Probate Court and instructed him to file for appointment as successor personal representative with that court. The Register of Wills added that if Mr. Colachicco wants to transfer venue for Decedent's probate assets to Maryland, he must file a petition to transfer venue in the Florida Probate Court and request that Maryland take jurisdiction over all of Decedent's assets.

Additionally, the Register of Wills stated that if Mr. Colachicco "would like to file a formal petition of some sort, please file [the] long form petition (i.e. Petition to transmit venue, appoint a successor, remove a personal rep, determine distribution, construe a Will, etc [sic]) along with [a] \$20 controversial fee." The Register of Wills cited to Estates & Trusts Article § 5-103 stating that "[p]robate proceedings concerning a decedent may not be maintained in more than one county. . . . If a proceeding is commenced in more than one county, the court of the county where proceedings are filed first has exclusive jurisdiction to determine the venue." The Register of Wills provided further guidance explaining what

“[should] occur, is that you should file in Lake County, FL for appointment of a successor personal representative, as that is the court that has current jurisdiction. The successor personal representative would then have the authority to administer the remaining estate assets and nothing else would need to be filed with our Court.”

After receiving the Register of Wills’ Memorandum, Mr. Colachicco, through counsel, filed a Request for Judicial Probate in the Orphans’ Court on November 16, 2023. Mr. Colachicco requested that the Orphans’ Court direct the Register of Wills to open a probate estate for administration of Decedent’s Maryland Property, appoint Mr. Colachicco as personal representative of Decedent’s Estate, order that a nominal bond be imposed, order that Decedent’s estate proceed under administrative probate, and order that the matter be set for a hearing. Without holding a hearing, the Orphans’ Court issued an order on December 13, 2023, denying Mr. Colachicco’s Request for Judicial Probate with prejudice, citing to Estates & Trusts § 5-103(c)(3) and Rule 6-111(c).

II. Questions Presented

Mr. Colachicco noted a timely appeal from the final judgment⁴ of the Orphans’ Court and presents the issues which we rephrase as follows:⁵

⁴ See Md. Code Ann., Cts. & Jud. Proc. § 12-501(a). We note that before an order from an orphans’ court “can be appealable it must be one which finally settles some disputed right or interest of the parties, or be so far final as to determine and conclude the rights involved in the action, or to deny to the party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject-matter of the proceedings.” *Schlossberg v. Schlossberg*, 275 Md. 600, 612 (1975) (citations omitted) (cleaned up).

⁵ In his brief, Mr. Colachicco framed the questions as follows:

1. Did the Orphans' Court err in denying Mr. Colachicco's petition for judicial probate pursuant to Estates & Trusts § 5-103(c)(3) and Rule 6-111(c)?
2. Does the Orphans' Court have jurisdiction to hold a hearing on the merits on Mr. Colachicco's petition for judicial probate?

III. Discussion

A. Orphans' Court Order

1. Standard of Review

This is a direct appeal from the Orphans' Court which made no factual findings in its determination. The issues before us involve the interpretation and application of Maryland statutory law and the Maryland Rules which are subject to *de novo* review. *Shealer v. Straka*, 459 Md. 68, 80 (2018).

Whether the Orphans' Court erred in denying Mr. Colachicco's petition, relying on Estates & Trusts § 5-103(c)(3) and Rule 6-111(c), is an issue of statutory and rule interpretation. "[O]ur primary goal is always 'to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional, or part of the Rules.'" *Barbre v. Pope*, 402 Md. 157, 172 (2007) (quoting *Gen. Motors Corp. v. Seay*, 388 Md. 341, 352 (2005)). We adhere to the fundamental principles of statutory construction:

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1. Whether the Orphans' Court erred in denying the request for judicial probate and in declining to open a decedent's estate for a decedent who owned real property in the State of Maryland
 2. Whether the Orphans' Court erred in not holding a hearing on the Request for Judicial Probate

[t]o ascertain and effectuate the intent of the Legislature. Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology. When construing a statute, we recognize that it should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory. We will neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute. If the plain language of the statute is unambiguous, the inquiry as to the legislative intent ends; we do not then need to resort to the various, and sometimes inconsistent, external rules of construction, for the Legislature is presumed to have meant what it said and said what it meant. If, however, the meaning of the plain language is ambiguous or unclear, we seek to discern legislative intent from surrounding circumstances, such as legislative history, prior case law, and the purposes upon which the statutory framework was based.

Tribbitt v. State, 403 Md. 638, 645-46 (2008) (citations and internal quotations omitted).

Additionally, we must view the plain language

within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.

In re Adoption/Guardianship of Tracy K., 434 Md. 198, 207 (2013) (citing *Lockshin v. Semsker*, 412 Md. 257, 275-76 (2010)).

2. *The Venue Statute: Est. & Trusts § 5-103*

The Orphans' Court dismissed Mr. Colachicco's petition for judicial probate with prejudice and cited to Estates & Trusts § 5-103(c)(3), which governs venue for administrative and judicial probate. Mr. Colachicco asserts that the Orphans' Court order misapplied Section 5-103(c) because probate proceedings for Decedent's Maryland Property were only initiated in Montgomery County. He further argues that Section 5-

103(c) only applies to counties in Maryland and not counties located in another state. For reasons that we will outline, we agree that the Orphans' Court erred in citing to Section 5-103(c)(3).

First, the plain language of Section 5-103 provides that:

Domicile of decedent at time of death

(a) The venue for administrative or judicial probate is in the county in which the decedent was domiciled at the time of death, or, if the decedent was not domiciled in Maryland, the county in which the petitioner believes the largest part in value of the property of the decedent in Maryland was located at the time of death.

Decedents not domiciled in Maryland at time of death

(b)(1) For the purpose of determining venue for the administration of the estate of a decedent who was not domiciled in Maryland at the time of death, the situs of tangible personal property is its location.

(2)(i) The situs of intangible personal property is the location of the instrument evidencing a debt, obligation, stock, or chose in action.

(ii) If there is no instrument, the residence of the debtor governs.

(3) The situs of an interest in property held in trust is any county where the trustee may be sued.

Proceedings in more than one county

(c)(1) Probate proceedings concerning a decedent may not be maintained in more than one county.

(2) If a proceeding is commenced in more than one county, the court of the county where proceedings are filed first has exclusive jurisdiction to determine venue.

(3) If proper venue is finally determined to be in another county, the proceeding, including a will, petition, or any other paper filed, shall be transferred to the proper court.

The issue before us presents ambiguity in the meaning of "county." "A statute is ambiguous where two or more reasonable interpretations exist." *Stachowski v. Sysco Food Servs. of Baltimore, Inc.*, 402 Md. 506, 517 (2007) (citing *Chow v. State*, 393 Md. 431, 444 (2006)). The Orphans' Court order dismissed Mr. Colachicco's petition because the first

probate proceeding over Decedent's estate commenced in Lake County, Florida. The Register of Wills also cited to Section 5-103 in the New Proceedings Division Memorandum informing Mr. Colachicco that Decedent's estate has already been probated by the Florida Probate Court, and he should file for appointment as successor personal representative with that court. Conversely, Mr. Colachicco asserts that the statute only pertains to counties located in Maryland. We find the meaning of "county" to be ambiguous and turn to a review of prior case law, legislative history, and the purpose of the statutory framework to discern the legislature's intent.

The Estates & Trusts Article states that "[t]he purpose of the estates of decedents law is to simplify the administration of estates, to reduce the expenses of administration, to clarify the law governing estates of decedents, and to eliminate any provisions of prior law which are archaic[.]" Est. & Trusts § 1-105(a)(1). Additionally, the "article shall be liberally construed and applied to promote its underlying purpose." *Id.* § 1-105(a)(2). The venue statute, Section 5-103, was previously found in Article 93, Section 18 of the 1957 Code, which stated that:

[w]henver any person shall die intestate, leaving in this State personal estate, letters of administration may forthwith be granted by the orphans' court of the county wherein was the party's mansion house or residence; or in case he had no mansion or residence within the State, letters shall be granted in the county where the party died; and in case the party neither had mansion or residence nor died within this State, letters may be granted in the county wherein lies or is supposed to lie a considerable part of the party's personal estate.

The General Assembly substantively revised the venue statute in 1969 and incorporated similar language used in Section 18. *Wright v. Nugent*, 23 Md. App. 337,

350-51 (1974), *aff'd* 275 Md. 290 (1975) (*per curiam*). Since 1969, the General Assembly has only made minor adjustments to the statute's language and style but have made no substantive changes. *Id.* at 352 ("The 1974 revision made only minor changes in style and language"); Acts 2019, Ch. 197, § 2 ("AND BE IT FURTHER ENACTED that it is the intention of the General Assembly that this Act shall be construed as a nonsubstantive revision and may not otherwise be construed to render any substantive change in the law of the State.").

The Court in *Wright* first reviewed the statutory construction of Section 5-103 in 1974. 23 Md. App at 350-52.⁶ Chief Judge Orth reviewed the history of subsection (a) and subsection (b) in the 1974 version of Section 5-103 and referred to the Comment section of the 1969 statute. *Id.* at 351-52. The Comment section provides insight into the General Assembly's intent when drafting Section 5-103:

the venue of proceedings will be relatively more fixed than under the prior Maryland law, which permitted the conduct of proceedings in the case of a non-domiciliary of Maryland in any county where a substantial portion of the decedent's Maryland property was located. However, in order to avoid undesirable jurisdictional disputes the new statute makes determinative the *bona fide* belief of the petitioner, at the time of filing the petition, as to the County in which the largest part in value of the decedent's property was located at the time of his death. The statute eliminates the provision of the prior law whereby the County in which death occurred is on that account alone necessarily a County of proper venue.

⁶ The issue in *Wright* addressed probating a non-resident decedent's will and determining the decedent's domicile. 23 Md. App at 345. While the facts in *Wright* are distinguishable from the case before us, the Court's analysis of the venue statute is informative.

Id. at 351-52; Art. 93, § 5-103 (1969). The Comment also discussed the intent of subsections (a) and (b):

Subsection (a) is not intended to require proceedings to be conducted in Maryland where the decedent was not domiciled in Maryland. If the decedent is not domiciled in Maryland and if it is decided by the petitioner to have the primary proceeding conducted in Maryland, subsection (b) is intended merely to determine the proper county in which the proceeding shall be conducted.

Id.

The Comment further indicated that:

[t]he statute does not deal with the subject of conflicting claims of domicile in different states inasmuch as full faith and credit is a matter of federal constitutional law and the problems of interstate conflicts in the determination of domicile, in addition to being beyond the control of the Maryland Legislature, are probably too subtle and various to be treated by statute and have, therefore, been left to the general doctrines of the conflict of laws.

Art. 93, § 5-103 (1969). *Wright* determined that Section 5-103:

declares where in Maryland such a will may be probated when the decedent was not domiciled in Maryland at the time of [their] death, namely, the county in which the person petitioning for probate believes the largest part in value of the property of the decedent in Maryland was located at the time of [their] death.

23 Md. App. at 353.

Although the Comments are not law, the Legislature reasons that Section 5-103 only applies to counties in this State because the subject of conflicting claims is beyond the control of the legislature and is a subject dealing with conflicting state claims that is left to the conflict of laws doctrines. Upon reviewing the legislative history, prior case law, and purpose of the statute, we find that the meaning of “county” only applies to in the State of

Maryland. Thus, the Orphans' Court erred in citing to Section 5-103(c)(3) in the order dismissing Mr. Colachicco's petition.

3. *Maryland Rule 6-111(c)*

Moreover, Mr. Colachicco contends that the Orphans' Court erred in citing to Rule 6-111(c). We apply the same principles used in statutory construction to interpret the Maryland Rules. *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 78 (2001). "When the Maryland Rules deal with the same subject matter as a statute, [the relevant rules and statutes] are to be 'construed so as to harmonize with each other and not produce an unreasonable result.'" *Battley v. Banks*, 177 Md. App. 638, 650-51 (2007) (quoting *Davis v. Mills*, 129 Md. App. 675, 678-79 (2000)).

"The principal aim of interpreting the Maryland Rules is to ascertain . . . [the Rules Committee's and the Supreme Court's] intent from the statutory language, reading pertinent parts of the [rule's] language together, giving effect to all of those parts if we can, and rendering no part of the [rule] surplusage." *Pickett*, 365 Md. at 78-79 (citations omitted). Our goal when analyzing the meaning of a rule is "to discern the legislative purpose. . . . To that end we must consider the context in which . . . the rule appears, including related statutes or rules and relevant legislative history." *Aguilera v. State*, 193 Md. App. 426, 433 (2010). If the rule's plain language "is unambiguous and clearly consistent with the rule's apparent purpose, our inquiry' ordinarily ends and we apply the rule 'as written without resort to other rules of construction.'" *Zadeh v. State*, 258 Md. App. 547, 574 (2023) (quoting *State v. Bey*, 452 Md. 255, 265 (2017)) (cleaned up).

“[T]he Maryland Rules of Procedure should, of course, be liberally construed so as to effectuate their purposes and to do justice between the parties.” *See Morton v. Schlotzhauer*, 449 Md. 217, 241 (2016) (quoting *Miller v. Talbott*, 239 Md. 382, 390 (1965)); *see also* Md. Code Ann., Cts. & Jud. Proc. § 1-201(a). The probate “rules shall not be construed to extend or limit the jurisdiction of any court or, except as expressly provided, the venue of actions.” Md. Rule 6-104(b). The rules do not “supersede common law or statute unless inconsistent with [the] rules.” Md. Rule 6-104(c). We begin by reviewing the plain language of Rule 6-111(c), which provides:

(c) Proceedings in More Than One County. Probate proceedings may not be maintained in more than one county. If proceedings are commenced in more than one county, the court of the county in which proceedings were filed first has exclusive jurisdiction to determine venue. If proper venue is determined to be in another county, the proceedings, including any will, petition, or other paper filed, shall be transferred to the proper court.

The language used in Rule 6-111(c) is virtually identical to Section 5-103(c) and we must read Rule 6-111 in harmony with the venue statute. Since the General Assembly intended to limit the meaning of “county” to those located in Maryland, we hold that the Rule is intended to mean the same.

We now turn to the Minutes of the Court of Appeals Standing Committee on the Rules of Practice and Procedure. Rule 6-111 was adopted on June 28, 1990, and effective January 1, 1991. The Rules Committee, at its hearing held on March 13, 1987, addressed the Committee’s attempt to draft uniform probate rules. *Minutes of the Court of Appeals Standing Committee on Rules of Practice and Procedure*, 10 (Mar. 13, 1987). The Minutes suggest that this was the Committee’s first attempt to draft uniform probate rules because

“the practices of every county are different,” but “the rules are workable” and “the underlying premise is to make it easy for laypersons to understand.” *Id.* at 10-11. The first rule addressed was Rule 6-101. Rule 6-101 governs the applicability of Title 6, Settlement of Decedents’ Estates, and came into effect in 1990. The current rule states that “[t]he rules in this Title apply to all matters in the orphans’ courts and before the registers of wills relating to the settlement of decedents’ estates. Md. Rule 6-101.

One concern raised during the Committee’s discussion on Rule 6-101 was whether the rules are designed to supplement or supersede the Estates & Trusts statute. *Id.* at 11, 13. Responding to this concern, Mr. Lombardi, the Chairman of the Probate Subcommittee, “inquired whether there was any objection to adding additional language to proposed Rule 6-101 either in the rule itself or as a Committee note.” *Id.* at 13. There being no objection, however, a committee note was incorporated to add that “[t]he statutory framework for the settlement of decedents’ estates is set forth in Code, Estates and Trusts Article. These rules are intended to implement the provisions of the Estates and Trusts Article.” Md. Rule 6-101.

Turning to Rule 6-111, Mr. Lombardi explained that “except for section (b), the rule is almost verbatim from Section 5-103 of the Estates and Trusts Article.” *Id.* at 23-24. Since the Committee incorporated language indistinguishable from Section 5-103 when drafting Rule 6-111, we find that the Supreme Court of Maryland intended to effectuate the same meaning of “county” in Rule 6-111(c) as the Legislature had in Section 5-103(c).

Furthermore, the General Assembly's comments to Section 5-103 suggests that the subject of interstate conflicts is beyond its control and left to the general conflict of laws doctrines. As we previously stated, Ms. Colachicco's authority to administer Decedent's estate came from two distinct sovereignties. Although the primary probate proceeding was in Florida, Maryland has jurisdiction over Decedent's property in Maryland.

Therefore, the Orphans' Court erred in relying on to Est. & Trusts 5-103(c)(3) and Rule 6-111(c) in dismissing Mr. Colachicco's petition without a hearing. We next review whether the Orphans' Court has jurisdiction to hear the merits on Mr. Colachicco's petition.

B. Administering Estates in Maryland

1. Register of Wills: Administrative Probate and Foreign Personal Representative Proceedings

Several proceedings have been initiated to administer Decedent's estate, including judicial probate in Florida, foreign personal representative proceedings, administrative probate, and a request for judicial probate in this State. Therefore, we begin with a brief overview of the proceedings that have been commenced in this case.

First, administrative probate "is a proceeding instituted by the filing of a petition for probate by an interested person before the [Register of Wills] for probate of a will or a determination of the intestacy of the decedent, and for the appointment of a personal representative." Est. & Trusts § 5-301(a). In addition, interested persons "may petition the [orphans'] court to resolve any question concerning an estate or its administration." *Id.* § 2-102(c). "A probate proceeding provides a vehicle for identifying and collecting the decedent's property, paying the debts of the decedent and the estate in an orderly way, and

distributing the remainder of the estate to those entitled to share in the estate either under the decedent's will or according to intestate distribution." *Shealer*, 459 Md. at 81 (quoting *Green v. Nelson*, 227 Md. App. 698, 708 (2016)).

A second mechanism for estate administration in Maryland is foreign personal representative proceedings, formerly known as ancillary probate proceedings.⁷ A personal representative appointed in the state which the decedent was domiciled may commence proceedings in the non-domiciliary jurisdiction to administer the decedent's property within that jurisdiction's boundaries. "[T]he purpose of this process is to collect assets, to transfer and record changed title to real property located there, and to pay any debts in that locality." *See Randall v. State*, 223 Md. App. 519, 567 (2015) (citation omitted).

Even when the domiciliary and ancillary administrator of the estate are the same person, their authority is considered to have been received "from two distinct sovereignties," and they are "separately accountable" for the property received "according

⁷ "When a decedent dies domiciled outside of Maryland but owning real property in this State at the time of death, the person appointed as Personal Representative in that jurisdiction will need to initiate a proceeding in Maryland to dispose of that property. This is known as either a 'Foreign Personal Representative' or 'Ancillary Probate' proceeding." The Office of the Register of Wills, *Foreign Personal Representative*, <https://registers.maryland.gov/main/fpinfo.html>. The distinction between the previous and former ancillary proceedings is the need for the foreign personal representative to apply for letters of administration before initiating proceedings in the ancillary state. Foreign personal representatives are currently governed by the Estates & Trusts Article §§ 5-501 to 5-506. Traditional ancillary probate proceedings in Maryland have been abolished by statute. *See Est. & Trusts § 5-501*.

to the tenor of [their] several appointments.” *Baker v. Cooper*, 166 Md. 1, 8 (1934).⁸ “If a person dies intestate leaving property in several different jurisdictions, the legal representative of the [decedent] in each of such jurisdictions derives [their] authority from the sovereignty which had jurisdiction over the property so left in that jurisdiction.” *Id.* at 7. The legal representative’s “dual capacities are as distinct as if they had been conferred on different persons, and must be so regarded[.]” *Id.* at 8.

Under Maryland law, “[a]ny foreign personal representative may exercise in Maryland all powers of the office, and may sue and be sued in Maryland, subject to any statute or rule relating to nonresidents.” Est. & Trusts § 5-502(a). “A foreign personal representative has the same power to sell, mortgage, lease, convey, or otherwise transfer or assign real property or an interest in the property which is located in Maryland as a Maryland personal representative has with respect to real property and an interest in the property.” *Id.* § 5-502(b).

⁸ *Baker* was decided prior to the enactment of Estates & Trusts § 5-501. However, no statutory law or case law suggests that *Baker* has been superseded or overruled. In *Baker*, the Court found that when one dies intestate leaving property in different jurisdictions, the administration in one state is independent of the administration in any other jurisdiction and there is no privity between administrators in different states even if the administrator is the same person in each state. 166 Md. at 7-8. Although the issue in *Baker* arose from a dispute regarding a suit against an administrator, the Court’s findings follow the standard that property located within a state’s borders is subject to the powers and laws of that state and provides a summation of the legal authority granted to administrators over property located in several jurisdictions.

2. *Judicial Probate*

Proceedings for judicial probate may begin any time before administrative probate or after administrative probate at the request of an interested person. *See id.* § 5-402(a)(1). Interested persons may initiate the proceeding by filing a petition for probate with the orphans' court for a "determination of intestacy of the decedent, and for the appointment of a personal representative." *Id.* § 5-401(a)(1)-(2). Interested persons include heirs who are entitled to property of an intestate decedent. *Id.* § 1-101(i)(1)(iv). Estates & Trusts § 5-104(3) grants a statutory right to the children of intestate decedents to apply for letters of administration or judicial probate. "[P]ersons who have the statutory right to apply for letters of administration are entitled at least to be heard in respect to their claims." *Langfelder v. Langfelder*, 189 Md. 88, 92 (1947). Maryland Rule 6-302(c) also requires the orphans' court to "hold a hearing on the petition for judicial probate and shall take any appropriate action." A hearing for judicial probate is a plenary proceeding conducted to determine issues of fact at the request of an interested person. Est. & Trusts § 5-404(a)(1). Plenary proceedings imply "a complaint, a request for some definite relief, and allegations of fact sufficient to justify the granting of that relief." *Langfelder*, 189 Md. at 93.

Article IV, § 40 of the Maryland Constitution created the orphans' courts and granted the legislature the power to determine the court's authority. The legislature confers limited powers to the orphans' courts as set forth in the Estates & Trusts Article. The discretion of the orphans' courts in judicial probate proceedings is restricted and must be granted by express statutory terms. *See Bostetter v. Fahrney-Keedy Memorial Home for*

the Aged, Inc., 20 Md. App. 234, 246 (1974). Title 2 of the statute governs the court's jurisdiction. An orphans' court "may not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred." Est. & Trusts § 2-102(a)(2). However, an orphans' court has authority to conduct judicial probate, direct the conduct of a personal representative, summon witnesses, and issue orders that may be required in the court of the administration of an estate of a decedent. *Id.* § 2-102(a)(1).

An orphans' court has subject matter jurisdiction when the legislature grants "the power to act with regard to a subject matter" and to "render a judgment over a class of cases within which a particular one falls." *In re Tracy K.*, 434 Md. at 204 (citations omitted). Generally, courts may not exercise jurisdiction over title to land located in another state. *See Bish v. Bish*, 181 Md. 621, 627 (1943); *Wright*, 23 Md. App. at 353; *Baker*, 166 Md. at 7-8; *Harrison v. Prentice*, 183 Md. 474, 478 (1944); *see also Kortobi v. Kass*, 182 Md. App. 424, 431 (2008).

"[B]efore orphans' courts may exercise jurisdiction, 'the facts necessary to clothe them with jurisdiction must affirmatively appear upon the face of their proceedings.'" *Kaouris v. Kaouris*, 324 Md. 687, 693 (1991) (citing *Talbot Packing Corp. v. Wheatley*, 172 Md. 365, 369 (1937); *Zulver Realty Co. v. Snyder*, 191 Md. 374, 379-80 (1948))). For example, in *Pole v. Simmons*, the decedent's daughter petitioned the orphans' court to open and restate an account to include the sums she claimed were advances as part of the estate assets. 45 Md. 246, 248 (1876). The appellees denied that the orphans' court had

jurisdiction and the orphans' court dismissed the daughter's petition. *Id.* at 249. The Supreme Court of Maryland reversed the orphans' court's judgment, holding that:

we think it clear the Orphans' Court had jurisdiction of the matter presented by the petition, for it would be impossible to superintend and make distribution of the estate without the authority to determine what was to be distributed; and this necessarily involves the questions as to what are the assets . . . Having jurisdiction of the subject-matter of the controversy, the Orphans' Court has the right to hear and receive evidence in relation to it[.]

Id.

In the case before us, several proceedings have been initiated to administer Decedent's estate. The primary proceeding to probate Decedent's estate commenced in the Florida Probate Court following Decedent's death in 2010. The Florida Probate Court appointed Ms. Colachicco as sole personal representative over Decedent's estate.

On July 27, 2010, Ms. Colachicco initiated foreign personal representative proceedings to pay inheritance tax on Decedent's Maryland Property. Ms. Colachicco filed the required documents with the Register of Wills including the foreign personal representative application, letters of administration, a list of recipients of Maryland property, appointment of a resident agent, notice to creditors of appointment of foreign personal representative, and certificates of publication. Here, Ms. Colachicco received her authority from two distinct sovereignties—Florida and Maryland—and, according to her several appointments, she was accountable for both—Decedent's Florida property and the Maryland Property. *See Baker*, 166 Md. at 7. The transcript of record indicates that on August 20, 2010, Ms. Colachicco satisfied the non-probate inheritance tax on Decedent's

Maryland Property. Ms. Colachicco recently passed away without distributing the Maryland Property.

On November 15, 2023, Mr. Colachicco initiated administrative probate in the Register of Wills requesting to open an estate for Decedent's Maryland Property and appoint him personal representative of Decedent's estate. Upon the filing of that petition, the Register of Wills issued a New Proceedings Division Memorandum informing Mr. Colachicco that Decedent's estate has been probated in Florida, and to file for appointment as successor personal representative with that court. The Register of Wills added that if Mr. Colachicco wants to transfer venue for Decedent's probate assets to Maryland, he must file a petition to transfer venue in the Florida Probate Court and request that Maryland take jurisdiction over all of Decedent's assets. On November 16, 2023, Mr. Colachicco filed a Request for Judicial Probate in the Orphans' Court which was denied without a hearing on the same basis, implying that venue was improper.

C. The Orphans' Court's Jurisdiction to Hold a Hearing

Mr. Colachicco contends that the Orphans' Court has jurisdiction over Decedent's Maryland Property to open an estate and appoint him as personal representative. In support of his argument, Mr. Colachicco cites a passage in *Roach v. Jurchack*, 182 Md. 646, 649 (1944), as authority stating that:

[i]t is a universal principle of the common law that the formalities for transfer of real estate, whether *inter vivos* or testamentary, are governed by the *lex*

loci rei sitae,⁹ irrespective of the *lex domicilii*.¹⁰ The State has plenary power to determine the manner in which real estate within its border may be conveyed or devised, and to prescribe the manner of administration of estates of deceased persons as to all property within its jurisdiction.

(citations omitted) (footnotes added). *Roach* emphasized a rule that has long been held—real property located within this State’s borders is subject to the powers and laws of Maryland. *See id.* For this reason, Florida lacks jurisdiction to administer and distribute property located in Maryland and the Orphans’ Court has subject matter jurisdiction to decide the merits on Mr. Colachicco’s petition.

Procedurally, Rule 6-302(c) requires the Orphans’ Court to hold a hearing on Mr. Colachicco’s petition for judicial probate. Estates & Trusts § 5-104(3) grants a statutory right to children of intestate decedents to apply for letters of administration or judicial probate. “[P]ersons who have the statutory right to apply for letters of administration are entitled at least to be heard in respect to their claims.” *Langfelder*, 189 Md. at 92.

While the procedure in the Orphans’ Court of this State is not formal, and great indulgence is allowed in the conduct of their proceedings, nevertheless these proceedings must be conducted in a fair and orderly manner and somewhat according to the pattern of procedure followed in the courts of equity, so that there will be an adequate record in each Orphans’ Court and it will be possible for the [appellate courts] to review the legality and propriety of any order, judgment or decree.

Id. at 90-91.

⁹ Real property is governed by the *lex loci rei sitae*, meaning that the laws of the place where the property is located and not the place of the decedent’s domicile controls. *See Harrison*, 183 Md. at 478.

¹⁰ Personal property is governed by the *lex domicilii* of the decedent, meaning that the place of decedent’s domicile and not the location of the property controls intestate succession and rules of descent. *Id.*

In *Langfelder*, one of the decedent's brothers lived in Baltimore and petitioned for letters of administration in the Baltimore City orphans' court to appoint him personal representative of decedent's intestate estate. *Id.* Decedent's second brother, a nonresident of Maryland, filed a similar petition requesting the orphans' court to appoint both him and the resident brother as personal representatives of decedent's estate. *Id.* at 91. Without holding a hearing on either petition, the orphans' court appointed the resident brother as administrator of the decedent's estate and refused to appoint the nonresident brother. *Id.* The nonresident brother appealed, and the Supreme Court noted that:

[t]he right to administer upon the estate of a deceased relative is a valuable right granted by the Legislature that cannot be delegated. Hence it is evident that the persons who have the statutory right to apply for letters of administration are entitled at least to be heard in respect to their claims. To assume that the judgment of the Court would not be influenced by competent evidence relating to the propriety of its choice is equivalent to assuming that the Court would disregard its manifest duty.

Id. at 92-93 (citations omitted).

Here, Mr. Colachicco asserts on appeal and in his petition for judicial probate that Decedent's estate in Florida is closed¹¹ and the Florida Probate Court does not have jurisdiction over Decedent's Maryland Property. Both assertions are correct, but whether Florida has preserved the right to appoint a successor personal representative over Decedent's estate because the primary probate proceeding commenced within Florida's jurisdiction is a question of Florida law. In an estate that originates in Florida, Florida law

¹¹ Despite Mr. Colachicco's assertions that the Florida estate is closed, he did not provide evidence of this claim in the petitions to the Register of Wills and the Orphans' Court. This is an essential fact to be determined by the Orphans' Court.

preserves the authority for Florida courts to appoint a successor personal representative if the sole surviving personal representative dies before administration is complete. *See* Fla. Stat. § 733.307 (2002) (“On the death of a sole or surviving personal representative, the court shall appoint a successor personal representative to complete the administration of the estate.”).

IV. Conclusion

Mr. Colachicco has two options. He is entitled to a hearing before the Orphans’ Court in which he must establish that his request to be appointed personal representative over Decedent’s estate is consistent with the primary probate proceeding in Florida, and Maryland courts would not be acting in derogation to the Florida Probate Court. Should he prevail, the issue would be whether he court act within the unclosed estate or would a new estate need to be opened. Mr. Colachicco may also request the Florida Probate Court to appoint a successor personal representative to Decedent’s estate. If the Florida Probate Court decides to appoint Mr. Colachicco as successor personal representative, he will become the Foreign Personal Representative over Decedent’s estate and would not need to continue with judicial probate in the Orphans’ Court.

**JUDGMENT OF THE ORPHANS’ COURT
FOR MONTGOMERY COUNTY IS
REVERSED AND REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. APPELLANT TO
PAY COSTS AS THERE IS NO APPELLEE.**