

DC BAR ETPL/TAXATION JOINT MEETING

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MARYLAND DEVELOPMENTS

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LEGISLATIVE UPDATE

- A. Maryland Estate Tax – Unified Credit
Chapter 21 (HB 308):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_21_hb0308T.pdf
Chapter 15 (SB 646):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_15_sb0646T.pdf
Statutory Reference: Amended Tax-General Section 7-309(b)

- B. Estates and Trusts – Maryland Trust Act – Governing Law of Trust Provisions.
Chapter 258 (HB 491):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_258_hb0491T.pdf
Chapter 259 (SB 267):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_259_sb0267T.pdf
Statutory Reference: New E&T Section 14.5-107

- C. Estates and Trusts – Contesting Validity of Revocable Trust – Limitation.
Chapter 256 (HB 444):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_256_hb0444T.pdf
Chapter 257(SB 348):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_257_sb0348T.pdf
Statutory Reference: New E&T Section 14.5-605

- D. Estates and Trusts – Breach of Trust Action – Limitation Period.
Chapter 260 (HB 474):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_260_hb0474T.pdf
Chapter 261 (SB 1014):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_261_sb1014T.pdf
Statutory Reference: New E&T Sections 14.5-105(15) and 14.5-904

- E. Inheritance Tax – Perpetual Conservation Easement – Farming Purposes – Exemption.
Chapter 293 (HB 198):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_293_hb0198T.pdf

Statutory Reference: New Tax-General Section 7-203(m)

- F. Estates – Administration Exemption – Transfer of Motor Vehicle and Boat Titles.
 Chapter 551 (SB 292):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_551_sb0292E.pdf
 Statutory Reference: New E&T Section 5-608
- G. Estates and Trusts – Administration of Estates – Waiver of Fees.
 Chapter 233 (HB 556):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_233_hb0556E.pdf
 Statutory Reference: Amended E&T Section 2-206
- H. Estates and Trusts – Transfer from Revocable Trust – Exemption from Taxes and Fees.
 Chapter 316 (HB 948):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_316_hb0948T.pdf
 Chapter 315 (SB 372):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_315_sb0372T.pdf
 Statutory Reference: Amended E&T Section 14.5-1001
- I. Recordation Tax – Exemptions.
 Chapter 594 (SB 999):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_594_sb0999T.pdf
 Statutory Reference: Amended Tax-Property Sections 12-108 and 12-117
- J. Appointment or Designation of a Standby Guardian – Adverse Immigration Action.
 Chapter 749 (SB 1239):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_749_sb1239T.pdf
 Statutory Reference: Amended E&T Sections 13-901, 13-904, 13-907
- K. Duties of a Guardian of the Person – Visitation.
 Chapter 287 (HB 1483):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_287_hb1483E.pdf
 Statutory Reference: Amended E&T Section 13-708
- L. Guardianship of Disabled Persons – Voluntary Admission to Mental Facility.
 Chapter 760 (HB 33):
http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_760_hb0033T.pdf
 Statutory Reference: E&T Sections 13-706 and 13 708; Health-General Sections 10-609 and 10-611
- M. Maryland Achieving a Better Life Experience (ABLE) Program – Modifications.

Chapter 390 (HB 782):

http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_390_hb0782T.pdf

Chapter 391 (SB 550):

http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_391_sb0550E.pdf

Statutory Reference: Education Sections 18-1903, 18-1905, 18-1909, 18-19A, 18-9B, and 18-19C

N. Estates and Trusts – Maryland Uniform Transfer To Minors Act – Award of Reasonable and Necessary Expenses.

Chapter 298 (HB 769):

http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_298_hb0769T.pdf

Statutory Reference: New E&T Section 13-323.1

CASELAW UPDATE

A. Wills; Location of Signatures on Instrument

In *Castruccio v. Estate of Castruccio*, 2017 WL 3667724 (2017), the Court of Appeals considered three questions regarding the execution formalities of the last will and testament of Peter A. Castruccio.

The case reports that, in 2010, Peter asked his attorney John Greiber for a copy of his 2008 will so that he could revise it. Peter marked up the 2008 will in the presence of his attorney and asked his “longtime employee” Darlene Barclay to transcribe the changes. Peter’s changes made the residuary bequest to his wife Sadie contingent upon her execution of a valid will and the filing of such will with the Anne Arundel Register of Wills (the “Register”) as of the date of his death. Darlene was the contingent residuary beneficiary. Peter filed his 2010 will with the Register during his life.

After Peter’s death, Peter’s lawyer petitioned to probate the 2010 will on file with the Register. Peter’s widow Sadie filed a Petition to Caveat the will and further petitioned the Orphan’s Court to transmit several issues to the Circuit Court including, “[w]as the Will actually attested and signed by credible witnesses in the presence of the Testator?” Sadie introduced deposition testimony of Peter’s attorney and the attorney’s daughter Samantha (another witness to the will) stating that the will had been stapled at the time of signing. Sadie also introduced an affidavit of her own lawyer stating that the probated will was “six separate, unattached pages, without any staple holes or other evidence of having ever been physically connected together.” It is important to note that Peter and the witnesses signed on different pages of the will. In

addition, the will on file with the Register was not initialed by Peter despite the attestation clause's statement that the testator initialed the preceding pages of the will.

The Circuit Court entered an order with several findings in the Estate's favor, including the finding that "the Will was actually attested and signed by credible witnesses in the presence of the testator[.]" Sadie appealed to the Court of Special Appeals, which affirmed the judgment of the Circuit Court.

After filing a motion for reconsideration, Sadie eventually petitioned the Court of Appeals to review three questions, including:

"Can a Will satisfy the requirements of a valid execution in Maryland if (a) the testator and the witnesses do not sign on the same page, or on physically connected pages, (b) the Will contains no proper attestation clause, and (c) the Will was not otherwise regular on its face because it expressly states the pages were initialed, but they were not?"

The Court of Appeals found that the flaw in the attestation clause did not invalidate the will because "an attestation clause is not a requirement for a valid will" in Maryland. They went on to consider the "primary issue" which was "whether attestation requires that the testator and witnesses sign on the same page of the will, or else on physically connected pages."

Sadie cited *Shane v. Wooley*, 138 Md. at 78, for the proposition that attestation requires that the witnesses sign on the same page as the testator or "on some sheet physically connected with it." In *Shane*, the Court of Appeals found that a one-page will signed by a testatrix and placed in an envelope bearing an attestation clause and the signature of three witnesses was invalid. The *Shane* Court reasoned that "witnesses must sign, either upon the same sheet as the signature of the testator, or on some sheet physically connected with it, to constitute a valid will." *Id.* at 78. The Court noted that the *Shane* Court relied on *Schouler, Law of Wills, Executors, and Administrators* §336 (5th ed. 1915) in delivering their opinion. *Schouler* §336

goes on to state that “[n]o particular mode of connection is prescribed by law; and hence the fastening by tape, by eyelets, by mucilage, or even by a pin seems unobjectionable. Where papers thus connected, the testator may sign on one paper and the witness on another, provided their intent corresponded.”

The Court noted that *Shane* did not go on to cite *Schouler* §337, which provides “[i]f the will be written on several sheets, whether fastened together or not, and the last sheet alone is attested in form, the whole will is well executed, provided all the sheets were in the room... and unquestionably, if the several pieces of paper are connected in their provisions and form a connected series, and are brought in this shape before the attesting witnesses at the time of their subscription, a single attestation will suffice for the whole.” The Court found that the failure of the *Shane* Court to cite *Schouler* §337 shows that the *Shane* Court was only concerned with the validity of a will when the witnesses signed a separate document not the validity of a will in which the witnesses signed on a separate page.

The Court concluded that the *Shane* rule does not apply to loose pages of a multi-page will but instead to papers that are not part of the will itself. The Court also found this result consistent with (i) their prior decisions in *Casson*, 304 Md. at 654 and *Slack*, 368 Md. at 617 and (ii) the Court’s general reluctance to impose formalities beyond those required by statute.

B. Trust Construction; Settlor’s Intent; “Spouse” refers to spouse at time of execution

The Court of Appeals addressed a trust construction issue when hearing the case of *In the Matter of the Albert G. Aaron Living Trust*, 457 Md. 699 (2017). The central issue in the case was whether the phrase “*my wife*” referred to the settlor’s first wife or the settlor’s second wife.

The trust in question was a revocable trust created in 2008 by Albert G. Aaron (“Albert”). At the time of the trust’s creation, Albert was married to Eileen Aaron (“Eileen”). The facts

suggest that Albert and Eileen were married for many years but were separated for the last several years of their marriage.

Article Two of the trust stated: *“I am married to Eileen Aaron. Any reference in this agreement to “my wife” is a reference to Eileen Aaron.”* 457 Md. at 703.

Article Two also identified other individual beneficiaries including Albert’s longtime girlfriend Myrna Kaplan who was listed as a “friend” (“Myrna”).

The trust created several trusts at Albert’s death: the Exempt Marital Deduction Trust (Article Six); the Non-Exempt Marital Deduction Trust (Article Six); a trust for his longtime assistant Frances (Article Six); a Grandchildren’s Trust (Article Six); and a Consolidated Residuary Trust (Article Thirteen). The Consolidated Residuary Trust was created if either Albert’s assistant Frances or Myrna was living. On termination, Section 13.03 provided that the Consolidated Residuary Trust would pass 25% to the Aaron Family Foundation and 75% to family beneficiaries (the “Beneficiaries”).

Section 13.04 of the trust directed the trustees to create the Aaron Family Foundation but went on to state “if my wife survives me, this distribution shall lapse and the property shall instead be distributed under the other provisions of this agreement.” As drafted, the contingent clause meant that if Albert’s wife survived him, the Beneficiaries would receive the additional 25% of the Consolidated Residuary Trust otherwise passing to the Foundation.

Eileen died in 2012. Five days after Eileen died, Albert married Myrna. Albert died approximately two months after his marriage to Myrna. Myrna survived Albert.

Between the time of the trust’s creation in 2008 and Albert’s death in early 2013, Albert partially amended his trust eleven times. The last amendment (the “Eleventh Amendment”) was

the only amendment made after Eileen's death and Albert's marriage to Myrna. At the time of the Eleventh Amendment, Albert was battling esophageal cancer.

The Eleventh Amendment made several changes to the trust agreement, including:

- (i) Amending Section 6.01 to convey Albert's jaguar to "Myrna Kaplan Aaron, my current wife"
- (ii) Providing that "Section 6.04 originally intended to be relevant for provisions of my past deceased wife, Eileen Aaron, shall now be intended to be for my current wife, Myrna Kaplan Aaron"
- (iii) Increasing the bequest to the Marital Deduction Trust from \$2 Million to \$8 Million
- (iv) Changing the composition of the Advisory Committee for the Albert G. Aaron Foundation

Throughout the Eleventh Amendment, Albert referred to either "Myrna Kaplan Aaron" or "Myrna Kaplan" when she was mentioned.

The trust agreement gave the trustees the power to amend the trust to "[c]orrect ambiguities, including scrivener's errors, that might otherwise require court construction...". *Id.* at 706. Following Albert's death, the trustees petitioned the Circuit Court to modify the trust. The trustees wished to prepare a trust restatement incorporating the terms of the eleven partial amendments and removing any superfluous language. In particular, the trustees wished to remove the clause in Section 13.04 providing "if my wife survives me, this distribution [to the Foundation] shall lapse and the property shall instead be distributed under the other provisions of this agreement." *Id.* at 706. The trustees argued that the provision was unnecessary because Eileen predeceased Albert. The Beneficiaries disputed the removal of the clause claiming that

the term “my wife” referred to Myrna rather than Eileen. The Beneficiaries claimed that the bequest to the Foundation lapsed because Myrna survived Albert.

The Circuit Court approved the trustees’ proposed restatement (including the removal of the contingency clause in Section 13.04) stating that the reference to “my wife” did not automatically transfer to Myrna when she married Albert. The Beneficiaries appealed and the Court of Special Appeals affirmed the Circuit Court’s decision finding that the term “my wife” referred to Eileen and the bequest to the Foundation did not lapse.

The Court of Appeals reviewed the decision *de novo*. The Beneficiaries put forth several arguments in favor of construing “my wife” to mean Myrna including Albert’s overall dispositive plan which they claimed showed an intent to benefit charity only if he did not have a surviving wife to support.

In their arguments, the trustees pointed to the fact that Albert did not amend the definition of “my wife” in Article Two to make reference to Myrna. Throughout the Eleventh Amendment, Albert referred to Myrna by her name. When Albert used the word “wife” in the Eleventh Amendment, he included Myrna’s name specifically. The trustees also pointed out that Albert changed the composition of the Foundation’s Advisory Committee in the Eleventh Amendment, showing an intent that it be created. The trustees alleged that it was a “virtual certainty” that Albert would predecease Myrna at the time he executed the Eleventh Amendment. *Id.* at 711.

The Court of Appeals noted that ascertaining and effectuating the settlor’s expressed intent is paramount. The settlor’s intent is “discerned from the within the four corners of the trust agreement...” *Id.* at 712 citing *Emmert*, 309 Md. at 23 (1987). The Court of Appeals agreed that “my wife” in Section 13.04 refers to Eileen rather than Myrna. The Court noted that the definition of “my wife” in Article Two was never amended in the eleven amendments to the trust instrument. The Court also looked at several provisions of the Eleventh Amendment to support its decision, including Section 6.01 (the jaguar bequest to Myrna), Section 6.04 (the

Marital Deduction Trust for Myrna's benefit); Section 6.06 (real property bequest lapsing if Myrna predeceased him); and amendments to Section 6.11 and Article Thirteen that evidenced Albert's charitable intent. The Court of Appeals found that the textual clues supported their finding that the words "my wife" in Section 13.04 "retained their express definition from Article Two..." *Id.* at 715. They also noted that Maryland case law supports "a presumption, which both parties acknowledge, that a spouse referred to in a trust or will is the spouse at the time of the execution if the instrument." *Id.* at 716 citing *The Law of Wills* §§34.2, 34.3 (Rev. 2004 & Supp. 2017). The Court also found that the Eleventh Amendment did not need be read in conflict with the trust agreement (and its earlier amendments). For that reason, the Court also dismissed the family beneficiaries' argument that if a trust and its amendment "stand in conflict, the codicil, or amendment controls because it contains the most recent expression of a testator's or settlor's intent." *Id.* at 718 citing *Wiesenfeld v. Rosenfeld*, 170 Md. 63 (1936). In light of the above, the Court held that the distribution to the Foundation did not lapse because the phrase "my wife" in Section 13.04 referred to Albert's late wife Eileen.

C. Time for Filing Appeal

In *Estate of Vess*, 234 Md.App. 173 (2017), the Court of Special Appeals considered a case involving several procedural matters. This case involved a petition to caveat. The caveat was brought by the decedent's niece, Claudia Vess ("Ms. Vess").

The decedent, Howard Vess, executed a Last Will and Testament dated August 11, 2006 (the "2006 Will"). 234 Md.App. at 180-81. The 2006 Will left a specific bequest of \$10 to decedent's brother. *Id.* at 181. Everything else passed to the decedent's good friend Robert V. Price, Jr. ("Mr. Price"), under the residuary clause. *Id.* The decedent died on June 10, 2011. *Id.* Mr. Price, as the named personal representative in the 2006 Will, filed a probate petition a few

weeks after the decedent's death with the Register of Wills for Prince George's County. *Id.* The Register of Wills appointed Mr. Price personal representative of the estate.¹ *Id.*

Ms. Vess, who was listed as an interested person and was identified as a potential heir in the probate petition, filed a petition to caveat in the Orphans' Court for Prince George's County. *Id.* at 181. In her petition, Ms. Vess alleged that: "Mr. Vess lacked testamentary capacity and was not of sound and disposing mind at the time of execution; that the instrument was not executed and witnessed properly; that the signature on the document was procured by fraud; and that the instrument was procured by the exercise of undue influence on Mr. Price, who allegedly maintained a confidential relationship with [the decedent]." *Id.* at 182. As a result, Ms. Vess requested that the Orphans' Court declare the 2006 Will invalid and that "any previous will be declared valid." *Id.* at 181. Ms. Vess's petition also included a request that Mr. Price answer the petition.² *Id.* at 182.

Mr. Price filed a motion to dismiss the petition to caveat on the twentieth day after the filing of the petition to caveat. *Id.* In Mr. Price's motion to dismiss, he contended that "Ms. Vess would have no direct interest in the estate even if she succeeded in invalidating the 2006 [W]ill." *Id.* at 182. In her response, Ms. Vess stated that she was "only seeking to ensure [the decedent's] wishes are honored fully...." *Id.* Ms. Vess also argued that her interest "based on intestacy should provide sufficient standing." *Id.* at 183. The Orphans' Court agreed with Mr. Price and dismissed the caveat petition. *Id.* On *de novo* appeal, the Circuit Court held that Ms. Price's "status as an heir-at-law was itself a sufficient interest for her to pursue the caveat proceeding." *Id.* As a result, the Circuit Court reversed the dismissal and remanded the case to the Orphans' Court. *Id.*

¹ Mr. Price was removed as personal representative in November 2014. Mr. Price's removal was not at issue before the Court of Special Appeals.

² According to Maryland Rule 6-432(a), within 5 days of the filing of a petition to caveat, the Register of Wills must issue "an order to Answer requiring the personal representative...to respond to the petition to caveat within 20 days after service." *Id.* at 182. In this case, the Register did not issue such an order within 5 days. Instead, the Register issued the order to Answer in April 2012. *Id.* at 183. Mr. Price did not file an additional response at that time because he had already filed a motion to dismiss within 20 days of the filing of Ms. Vess's petition to caveat. *Id.*

After the case returned to the Orphans' Court, Ms. Vess and Mr. Price submitted a joint petition requesting that the Orphans' Court transmit five issues to the Circuit Court for trial. *Id.* at 184. Before the Orphans' Court could finalize the order, however, Ms. Vess filed a line complaining that "Mr. Price had never filed a formal answer denying the allegations of [the petition to caveat]." *Id.* at 184-85.

As a result, Mr. Price filed a formal answer to the caveat petition.³ *Id.* at 185. Ms. Vess moved to strike Mr. Price's answer and asked the Orphans' Court to enter an order of default.⁴ The Orphans' Court granted Ms. Vess's motion without a hearing. *Id.* at 186. Mr. Price made a timely motion to vacate the order of default, which the Orphans' Court granted on October 22, 2014. *Id.* at 186. On the same day, the Orphans' Court entered an order transmitting the five issues to the Circuit Court for trial.⁵ *Id.* at 186-87.

Ms. Vess then filed a post-judgment motion asking the Orphans' Court to "exercise its revisory powers under Maryland Rules 2-534 and 2-535" and an "alternative motion" to amend the issues transmitted to the Circuit Court. *Id.* at 187. The Orphans' Court did not receive the motion within 10 days.⁶ *Id.* As a result, Ms. Vess's motion was denied, in whole, on January 12, 2015, and she subsequently filed a notice of *de novo* appeal to the Circuit Court. *Id.* at 188.

In the *de novo* appeal, Mr. Price filed a Motion for Summary Judgment arguing that Ms. Vess had failed to file a timely appeal from the order to transmit issues issued on October 22, 2014. *Id.* at 188. Mr. Price argued that "although a revisory motion filed within 10 days of the date of judgment may extend the time for noting an appeal, Ms. Vess had not filed her motion within that 10-day period." *Id.* Ms. Vess argued that she had timely filed her motion because her attorney had placed the motion in the overnight box of the Circuit Court on November 3,

³ Mr. Price actually filed his answer 2 days before Ms. Vess filed her line.

⁴ The Maryland Rules do not authorize an Orphans' Court to render a judgment by default. As a result, Ms. Vess requested that the Orphans' Court apply the rules that govern pleadings before the Circuit Court, specifically Md. Rule 2-613(b). *Id.* at 185. Mr. Price argued that Rule 2-613(b) did not apply to proceedings before the Orphans' Court. *Id.* at 186.

⁵ Ms. Vess had the right to appeal the order transmitting issues, but she did not. *Id.* at 187.

⁶ The Register of Wills stamped the document to indicate it was received on November 6, 2014. *Id.* at 187. The tenth day would have been November 3, 2014.

2014. *Id.* The Circuit Court held that “the docket entries were ‘presumptively correct’ and that those entries were ‘dispositive evidence’ of the filing date of November 6, 2014.”⁷ *Id.* at 189. As a result, the Circuit Court granted Mr. Price’s “Motion for Summary Judgment” on November 10, 2015. *Id.* at 190. The Circuit Court also remanded the matter to the Orphans’ Court so it could transmit issues to the Circuit Court in accordance with the October 22, 2014 order. *Id.*

Ms. Vess moved to alter, amend, revise and/or reconsider the Circuit Court’s judgment. *Id.* at 190. Ms. Vess offered additional evidence showing that she had filed her post-judgment motion on November 3, 2014.⁸ *Id.* After holding a hearing, the Circuit Court concluded that Ms. Vess’s post-judgment motion was received by the Circuit Court on November 3, 2014. *Id.* Notwithstanding the foregoing, the Circuit Court held that the post-judgment motion needed to be filed with the Orphans’ Court, not the Circuit Court, and thus Ms. Vess did not file her motion until it was received by the Register of Wills on November 6, 2014.⁹ *Id.* As a result, the Circuit Court denied Ms. Vess’s motion for reconsideration and remanded the case to the Orphans’ Court so it could transmit issues for trial. *Id.* at 191.

The Circuit Court’s civil coordinating judge then issued an order on April 18, 2016, directing the Orphans’ Court to “immediately frame the issues for trial.” *Id.* at 191. The Orphans’ Court entered an order stating that the same five issues from the October 22, 2014 order were being resubmitted for trial.¹⁰ *Id.* at 192.

7 Ms. Vess also argued that her November 6, 2014 post-judgment motion included “alternative motions” with respect to the transmitting issues that were timely. *Id.* at 189. The Circuit Court said it would consider the alternative motions if Ms. Vess raised them in a timely motion. *Id.*

8 The additional evidence included three separate time stamps on Ms. Vess’s submitted motion. The first time stamp was from the Clerk of the Circuit Court for Prince George’s County and read “2014 NOV 3 PM 8:32.” *Id.* at 190. The second time stamp marked Ms. Vess’s post-judgment motion as “FILED” with the clerk on “NOV 3 2014.” The third time stamp marked the post-judgment motion as “FILED” with the Register of Wills for Prince George’s County on “NOV 6 2014.”

9 The Circuit Court also ruled on Ms. Vess’s argument that her request to amend the transmitted issues was not subject to the 10-day deadline and was therefore filed on time. *Id.* at 191. The court agreed that Ms. Vess’s petition to amend the issues was timely, however, the court ruled that “amending the issues was ‘not necessary or appropriate under all of these the circumstances.’” *Id.*

10 The Orphans’ Court order was entered on April 20, 2016, the day before the order from the Circuit Court’s civil coordinating judge was docketed, April 21, 2016. *Id.* at 191-92.

Ms. Vess filed a notice of appeal from the Circuit Court to the Court of Special Appeals on April 28, 2016. *Id.* at 192. Ms. Vess’s appeal requested that the Court of Special Appeals review three orders from the Circuit Court: “the order granting judgment in favor of Mr. Price; the order denying Ms. Vess’s motion for reconsideration; and the subsequent order issued by the civil coordinating judge.” *Id.* In addition, Ms. Vess filed a notice of appeal from the Orphans’ Court to the Court of Special Appeals stating that she was appealing the Orphans’ Court order that “re-submitted five issues to the circuit court for trial.” *Id.* Even though the Court of Special Appeals held separate arguments for these two appeals, it issued a joint opinion. *Id.*

In the first appeal, the Court of Special Appeals first addressed Ms. Vess’s appeal of the three orders issued by the Circuit Court. *Id.* at 193-209. The Court analyzed the applicable Maryland Rules. *Id.* at 194-98. The Court noted that while a Rule 2-534 motion to alter or amend filed within 10-days after the entry of judgment extends the time period for filing an appeal from the Orphans’ Court to the Court of Special Appeals, it does not extend the deadline of filing an appeal from the Orphans’ Court to the Circuit Court. (*See Id.* at 194-95 for the Court’s analysis of the differences between Maryland Rule 8-202(c), which governs appeals from the Orphans’ Court to the Court of Special Appeals, and Maryland Rule 7-502, which governs appeals from the Orphans’ Court to the Circuit Court). As a result, Ms. Vess’s appeal of the Orphans’ Court order to transmit issues and strike the order of default was not timely because it was filed “well over 30 days after the entry of the judgement.” *Id.* at 196.

The Court then addressed the issue regarding which day Ms. Vess’s post-judgment motion was “filed.” *Id.* at 196-204. According to the Court, the “relevant filing requirement comes from [Maryland] Rule 2-534.” *Id.* at 198. The Court further held that the “determination of when a motion to the orphans’ court is ‘filed’ under Rule 2-534 should be largely consistent with the determination of when such a motion is filed with the circuit court under that Rule. The main difference is that, in the orphans’ court, the register of wills takes the place of the ‘clerk’ of the Court.”¹¹ *Id.* As a result, the Court held that “a motion under Rule 2-534 is ‘filed’ with the

¹¹ Maryland Rule 1-322(a), which governs the filing of an item with a court other than the Orphans’ Court, “requires that, to be filed, pleadings and papers must be actually delivered, either in person or by mail, to the clerk or a judge of the court in which they are sought.” *Id.* at 198.

orphans' court on the day it is actually received by or delivered to the register of wills." *Id.* Therefore, the Court agreed with the Circuit Court judge's reasoning that "it was immaterial whether the *circuit court* had received Ms. Vess's post-judgment motion within the period for making a motion to the *orphans' court*...because Ms. Vess needed to file the post-judgment motion 'with the Register of Wills, the Orphans' Court, not the Circuit Court[.]'"¹² *Id.* at 201-2. The Court held that "[i]n the absence of evidence that the clerk of the circuit court was authorized to receive filings on behalf of the orphans' court, we see no error in the conclusion that Ms. Vess failed to file the motion with the orphans' court in the time prescribed by Rule 2-534." *Id.* at 203-4.

The Court then addressed Ms. Vess's contention that even if her post-judgment motion to alter or amend was not filed within the 10-day period, the Circuit Court should not have dismissed her entire appeal because she filed her appeal with the Orphans' Court "within 30 days after the entry of the order to transmit issues." *Id.* at 204. The Court held that "an appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the judgment itself." *See Id.* at 204 (quoting *Bennett v. State Dep't of Assessments & Taxation*, 171 Md.App. 197, 203 (2006)). Therefore, the Court stated that the scope of review was "limited to whether the trial judge abused his [or her] discretion in declining to reconsider the judgment." *See Id.* at 205 (quoting *Grimberg v. Marth*, 338 Md. 546, 551-51 (1995)). The Court could not imagine "a more deferential standard than this one[.]" and affirmed the Circuit Court's decision. *Id.*

Ms. Vess also argued that the Orphans' Court "should not have transmitted any issues because it should not have vacated the 'order of default' against Mr. Price." *Id.* at 205. The Court held this argument to be pointless; Mr. Price had filed "a response to the petition in the form of a verified answer" within 20 days of the date when Ms. Vess filed her caveat petition.¹³

¹² See also *Id.* at 198-201 for the Court's discussion on the "presumptive correctness" of docket entries and the difference between the "accuracy" of docket entries vs. the "specificity" of docket entries.

¹³ The Court noted that the Orphans' Court rules do not require a formal answer, only a response to a petition, and that the verified answer filed by Mr. Price within 20 days of the filing of the petition to caveat, and months before Ms. Vess's request for an order of default, was sufficient. *See Id.* at 205-6.

Id. at 205-6. Therefore, the Orphans' Court "should never have *entered* the order in the first place." *Id.* at 205.

The final issue the Court addressed in the first appeal was whether the Circuit Court "abused its discretion when it attempted (unsuccessfully) to schedule a trial in October 2016." *Id.* at 207-9. The Court was not convinced that this issue was subject to appellate review. *Id.* at 208. Under Maryland Rule 8-131-(d), "[o]n appeal from a final judgment, an interlocutory order previously entered in the action is open to review." *Id.* (quoting Md. Rule 8-131(d)). The order, however, was entered "*after* the final judgment in the *de novo* appeal and the denial of reconsideration." *Id.* As a result, the Court questioned whether Maryland Rule 8-131(d) "permitted review of an interlocutory order entered in the action *after* the final judgment." *Id.* In the end, the Court held that the issue was moot because the trial date had "come and gone." *Id.* at 209.

In the second appeal, the Court of Special Appeals addressed whether the Orphans' Court abused its discretion when it issued orders transmitting issues to the Circuit Court and granted Mr. Price's motion to vacate the order of default while Ms. Vess's appeal addressing the order transmitting issues was pending before the Circuit Court and the Court of Special Appeals. *Id.* at 209-13. The Court held that the appeal in the Circuit Court ended on April 12, 2016, and the appeal from the Circuit Court did not start until April 28, 2016. *Id.* at 212. As a result, the Court dismissed the appeal of the April 20, 2016 order as moot because Ms. Vess's challenge was based "on the incorrect assertion that an appeal was 'pending,' either with the circuit court or with the Court of Special Appeals, at the time the orphans' court entered [its order on April 20, 2016]." *Id.* at 211.¹⁴

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¹⁴ In the second appeal before the Court of Special Appeals, the Court also addressed a separate challenge by Ms. Vess regarding an order issued by the Orphans' Court on September 28, 2016. *Id.* at 213. The Court dismissed this challenge because it was "not allowed by [the Maryland Rules or other law]." *Id.* at 215.

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D. Will Caveats; Stay of Proceedings; Transmitting Issues to Court of Law

In *Shealer v. Straka*, 2018 WL 1959440, the Court of Appeals considered the interpretation and application of Estates and Trusts §5-207 and §2-105 *de novo*. In this case, George M. Straka (“Straka”) filed a probate petition for the estate of his late daughter (“Decedent”) on March 30, 2016. Straka’s petition stated that he had made a diligent search for his daughter’s will but no will existed to the best of his knowledge. On the same day that Straka filed his probate petition, a different party filed the Decedent’s will with the Register of Wills.

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The Decedent's will appointed her best friend and Amy Shealer ("Shealer") as personal representatives.

On April 5, 2016, Shealer filed a petition for administrative probate of a regular estate. The probate petition sought the following additional relief: (1) that the will be admitted to judicial probate; and (2) that the orphan's court conclude that the will was duly executed, that the Decedent was legally competent to make the will, and (3) that the will was properly attested to and executed by two witnesses. The Register of Wills appointed Shealer as personal representative and the Orphan's Court issued a notice of judicial probate. The Orphan's Court issued a notice of hearing and Straka received notice in his capacity as an interested person. The Register of Wills also notified Straka that his letters of administration were revoked. Four days prior to the judicial probate hearing, Straka (through counsel) filed a motion for postponement stating that he intended to caveat the will and he intended to transmit issues to the Circuit Court. Straka also filed a petition to caveat that failed to include a complete list of interested parties.

On the day of the previously scheduled judicial probate hearing, Straka's counsel informed the Orphan's Court that his petition to caveat and been amended to include the complete list of interested parties and that he had filed it that day. Straka's counsel believed that the petition to caveat should stay the proceedings. The Orphan's Court denied Straka's motion for postponement and allowed Shealer's witnesses to come forward. Straka's counsel orally moved to "frame issue[s] to send to the [c]ircuit court." The Orphan's Court denied Straka's motion to transmit the issues and Straka's request to consider the petition to caveat on grounds that the petition was incomplete. The Orphan's Court admitted the Decedent's will and named Shealer the personal representative.

In his motion to reconsider filed with the Orphan's Court, Straka stated that: (1) the Orphan's Court erred in not staying the probate matter following the filing of the caveat petition;

and (2) the Orphan's Court erred when it failed to transmit issues. The Orphan's Court denied the motion to reconsider.

Straka appealed and the Court of Special Appeals reversed the judgment of the Orphan's Court finding that a petition to caveat stays all proceedings until the caveat is addressed. Shealer sought a writ of certiorari and presented several questions including: (1) how should an Orphan's Court proceed when an interested party files a petition to caveat? and (2) what is the proper procedure when an interested party requests an Orphan's Court to transmit factual issues to a court of law?

The Court of Special Appeals reviewed these statutory interpretation and application questions *de novo*. The Court of Special Appeals examined the plain language of Estates & Trusts §5-207(b) which provides that if a "petition to caveat is filed before the filing of a petition for probate, or after administrative probate, it has the effect of a request for judicial probate. If filed after judicial probate, the matter shall be reopened and a new proceeding held as if only administrative probate had previously been determined." 2018 WL 1959440 at 6.

The Court of Special Appeals also looked to the legislative intent behind §5-207 and determined that "the intent of the General Assembly is discernable from the plain and unambiguous language of the statute: an orphan's court will conduct a judicial probate proceeding after a party files a caveat." *Id.* at 8. Nevertheless, the Court looked to the Commission that was appointed in 1965 to study and revise Maryland testamentary laws. The Commission's comment to their proposed caveat legislation (almost identical to today's §5-207) stated "[i]n place of all the provisions of the prior law relating to a notice to caveat and the caveat procedures the Commission has substituted a single, simple procedure contained in Section 5-207 which it believes to be equally effective and protective of the caveator's rights. In the event of a caveat, judicial probate is mandatory..." *Id.* at 8. The Court found that the plain language of the statute and comments of the Commission during the drafting process makes clear

that a petition to caveat is a request for a judicial probate hearing and does not stay the proceedings.

The Court of Special Appeals then examined the language and legislative history of §2-105 which provides “[i]n any controversy in the [c]ourt, issues of fact may be determined by the [c]ourt or, at the request of any interested person made within such time as may be determined by the [c]ourt, by a court of law. Where such request is made before the [c]ourt has determined the issue of fact, the [c]ourt shall transmit the issues to a court of law.” Looking at the language and the Commission’s comments on the proposed 2-105, the Court of Special Appeals concluded that “an orphan’s court is required to frame and send issues to the circuit court upon a party’s request before an ultimate determination in the orphan’s court.” *Id.* at 13.

In rendering its decision, the Court of Special Appeals noted that there were procedural abnormalities in the case. Specifically, the judicial probate hearing was already scheduled when Straka filed his petition to caveat. The previously scheduled hearing date did not allow Straka time to amend his caveat petition or Shealer time to respond to the caveat petition. However, filing the petition to caveat did not stay the proceeding.

With regard to the oral request to frame and transmit issues, the Court of Special Appeals found that the Orphan’s Court erred when it refused Straka’s transmittal request. The request was made before the Orphan’s Court rendered a final determination and the issues should have been transmitted to the Circuit Court. The Orphan’s Court had an “imperative duty” to frame and direct issues to a court of law. *Id.* at 16 citing *Schmidt v. Johnston*, 154 Md. 125, 126 (1928).

E. Constructive Trusts; Life Insurance & Separation Agreement

In *Chassels v. Krepps*, 235 Md. App. 1 (2017), the Court of Special Appeals considered an action brought against a Decedent’s new husband by the Decedent’s ex-husband. In this case,

the Decedent and her ex-husband were parties to a Separation Agreement that obligated both of them to maintain a \$250,000 life insurance policy on their lives with their child named as beneficiary.

The Decedent remarried, had additional children, and became a stay-at-home mom. Following the remarriage, the Decedent's assets became jointly titled with her new husband and later were moved into the new husband's sole name. According to the ex-husband, the new husband told him "that he would do whatever is necessary to make sure the settlement agreement was complied with." Decedent told her ex-husband that the required policy was maintained through the new husband's Army benefits. Following that time, the new husband changed jobs and stopped paying the premiums of the life insurance policy. In addition, the couple moved to a house in the name of the new husband only and the Decedent became gravely ill.

Following Decedent's death and the ex-husband became aware of the lapse of the life insurance policy. Although the ex-husband had a valid breach of contract claim against the Decedent's estate, the Decedent did not have a probate estate to satisfy such a claim. Instead, the ex-husband filed a complaint on behalf of the child against the widower alleging various claims including constructive fraud, constructive trust, and unjust enrichment. The Circuit Court granted the widower's motion to discuss on all counts with prejudice. The ex-husband timely appealed.

The Court of Special Appeals noted that "Constructive Trust" is a remedy rather than a cause of action. 234 Md. App. at 904. The Court considered the constructive fraud claim, which is a valid cause of action but requires "proof that the defendant breached a legal or equitable duty by deception or by violating a confidence." *Id.* The Court noted that the "duty" element of a constructive fraud case requires the finding of a "confidential relationship" between the parties. The Court found that the ex-husband had not alleged facts to demonstrate (i) a confidential

relationship between the new husband and the child, or (ii) a confidential relationship between the new husband and ex-husband. *Id.* at 905.

The Court then turned to the issue of the ex-husband's unjust enrichment claim. If the widower stopped paying the policy premiums in order to avoid the expense and keep the money for himself, then there may be a valid claim for unjust enrichment. *Id.* at 906. For this reason, the Court found that the unjust enrichment claim should not have been dismissed. The Court noted, however, that the damages most likely would be limited to the amount of unpaid policy premiums pocketed by the second husband.

F. Subject Matter Jurisdiction: Review of Veteran Affairs Appointment of “Representative Payee”

In *Miseveth v. Aelion*, 235 Md. App. 250 (2017), the Court of Special Appeals considered whether the Circuit Court lacked the subject matter jurisdiction to enter an order addressing (i) the fiduciary appointed by and (ii) the distribution plan implemented by the Department of Veterans affairs.

In 2015, the appellant Jing Mao Miseveth (“Appellant”) filed a petition for guardianship of the person and property of her husband Theodore Miseveth (“Miseveth”). The Circuit Court appointed Appellant guardian of Miseveth’s person but appointed Jeanne Aelion (“Aelion”) guardian of Miseveth’s property. At that time, the Circuit Court expressed concerns about Appellant’s accounting practices and management of Miseveth’s funds. 235 Md. App. at 252.

In 2016, the Department of Veterans Affairs (“VA”) appointed Aelion as Representative Payee of Miseveth’s VA benefits (approximately \$3,000/month). As part of Aelion’s appointment, the VA issued a Fiduciary Agreement itemizing Miseveth’s monthly expenses and how the VA benefits would be used to pay such expenses. Shortly after, Appellant’s applied for appointment as Miseveth’s Representative Payee and the VA denied her application. Several

months later, Appellant reapplied for appointment as Miseveth's Representative Payee. The VA granted the Appellant's second application and she was appointed Representative Payee. The VA also developed a new Fiduciary Agreement for Appellant in her role as Miseveth's Representative Payee.

After Appellant's appointment as Representative Payee, Aelion filed a petition in Circuit Court stating that she had insufficient funds to cover Miseveth's expenses because Appellant was using Miseveth's VA benefits for "questionable" expenses. *Id.* at 255. The Circuit Court ruled that "[Aelion] is to be appointed the representative payee. I know sometimes it's difficult for the Veteran's Affairs to do what – they do often what they want to do. In the alternative, [appellant] is to transfer all funds, with the exception of \$1,000, to the guardianship account each month." 225 Md. App. at 255.

The Circuit Court denied the Appellant's motion for reconsideration. On appeal, the Appellant asked whether the Circuit Court had the power to order Appellant to reinstate Aelion as Representative Payee. Appellant argued that 38 USC §511(a) provides that the Secretary of Veterans Affairs' authority in the area of determining and providing veteran's benefits is not subject to state court review. *Id.* at 257, 258.

The Court of Special Appeals looked to the plain language of §511 and the Congressional intent behind §511. The Court noted that the VA conducted a separate investigation and determined that Appellant was best suited to act as the fiduciary of Miseveth's VA benefits. The Court of Special Appeals found that the Circuit Court lacked jurisdiction "to evaluate, directly or indirectly, the propriety of the decision made by the VA in the provision of veteran's benefits." *Id.* at 262. Accordingly, the decision of the Circuit Court was reversed.