

BILL NO. House Bill 868

TITLE: Circuit Court for Howard County – Judges Sitting as Orphans’ Court

COMMITTEE: Judiciary

HEARING DATE: March 2, 2022

POSITION: Opposed

FROM: Anne L. Dodd, Chief Judge, Howard County Orphans’ Court
Leslie Smith Turner, M.A., J.D., Associate Judge Howard County Orphans’ Court

The Orphans’ Court is the Probate Court.

THERE ARE MANY BENEFITS TO THE CURRENT SYSTEM

The Orphans’ Court is quick, cheap, less formal and less intimidating than other courts. While the Circuit Court deals with people accused of crimes and with civil disputes, the Orphans’ Court deals with people experiencing grief, who simply wish to settle their loved ones’ estate. The Orphans’ Court hears cases when there is a need for judicial review or there is disagreement among the interested persons. In addition to holding multiple hearings per week, on a weekly basis, the Orphans’ Court attends to filings that require judicial review and approval, such as accounts, claims, motions, petitions (for fees, removal of personal representatives, caveats, exceptions, requests for summary judgments, etc.).

Due to its very specific and lower case load, the Orphans’ Court is able to process matters much faster than the Circuit Court. This is apparent just by looking at the time it takes for an appeal to be heard. This efficiency advantage is especially important in certain cases: a petition to remove a personal representative, the distribution of assets to beneficiaries, judicial appointment of a personal representative, petitions to pay claims and many more.

The Orphans’ Court deals with a completely different constituency than does the Circuit Court. Many of the people it serves do not have attorneys to assist them and are less intimidated by the Orphans’ Court. It is easier for them to navigate on their own and less costly than in the Circuit Court.

Attorney and lay judges may serve on the Howard County Orphans’ Court. The position is part-time and the cost to the County is lower than in many other jurisdictions. The Howard County public will be disfranchised if its Orphans’ Court is abolished. The

public will no longer have a vote as to who will make very personal decisions about their estates.

It is important to note that all judges, lay and attorney, circuit court, district court, court of special appeals or orphans' court are required to participate in ongoing judicial education. Because the Orphans' Court is a court of special, limited jurisdiction, the breadth of knowledge required is substantially more specific than that of judges in other courts.

The Howard County Orphans' Court has an excellent record as is shown on the chart below: The time period represents the 11 ½ years Judge Dodd and Judge Turner have served on the bench. The information on the chart was taken from three sources: the office of the Howard County Register of Wills, the office of the Clerk of the Howard County Circuit Court and the office of the Howard County Orphans' Court.

YEAR	NO. RULINGS	NO. APPEALS	DISPOSITION	PENDING APPEALS
2011	674*	7	5-dismissed 1-settled 1-denied by CC, petitioner failed to appear	0
2012	881	7	1-OC upheld 1-settled 2-dismissed 3-withdrawn	0
2013	924	3	1-OC upheld 1-settled 1-dismissed	0
2014	962	3	1-OC upheld 2-dismissed	0
2015	1,070	4	1-appeal denied by CC 2-dismissed 1-summary judgment	0
2016	801	6	2-OC upheld 3-dismissed 1-withdrawn	0
2017	1,095	1	1-withdrawn	0
2018	997	1	½ OC upheld ½ OC reversed	0
2019	1,161	4	1-dismissed 3-withdrawn	0
2020	844**	0	Cases attributed to 2020 by ROW were actually 2021 cases	0
2021	1,079	7	1-OC reversed 2-dismissed 1-consent order-OC essentially affirmed	3

*= number incomplete; **= Covid related several months.

Yellow indicates OC overturned/reversed

Green indicates OC upheld/affirmed

MEETING PROTOCOL PREVENTED REBUTTAL OF MISINFORMATION IMMEDIATELY PRIOR TO DELEGATION VOTE ON BILL

On January 26, 2022, the Howard County Delegation held a work session and took a vote on the bill. It passed 8-3 (one delegate was absent) *without the Delegation ever hearing corrections to the false and misleading information that was provided by the Howard County Register of Wills immediately prior to the vote*. Since the vote was taken before the information could be rebutted, it is being addressed below:

FALSE AND MISLEADING STATEMENTS AND RESPONSES

1. “The last 3 years of the appeals that have been decided on the merits, the Court has been reversed twice and has not been affirmed once”. UNTRUE

In the last three years the court has been reversed one time (see chart above). The reversal was an appeal of a petition to admit a copy of a will granted by the Orphans’ Court. The Circuit Court held a *de novo* hearing and ruled that proper venue was Florida, not Maryland. This was not an issue raised in the Orphans’ Court. In another case, the appeal was to an Order Appointing a Personal Representative. A compromise was reached that resulted in a Consent Order that left the Personal Representative in place, acting as Special Administrator. This is an essential affirmation of the Orphans’ Court. The assertion that we were overturned is false.

2. “This past calendar year we’ve had a record number of appeals filed from the Orphans’ Court in the Court’s history”. UNTRUE.

There were 7 appeals in 2021, the same number of appeals as in 2011 & 2012. See chart: 2021 appeal dispositions – 1 consent order essentially affirming the Orphans’ Court’s ruling; 2 dismissals; 1 reversal (venue changed); and 3 pending.

3. “I don’t gamble but I would put money on both being reversed because the Court made egregiously bad decisions that have kept these estates open”. MISLEADING.

The “both” in the Register’s statement most likely refers to the fact that two appeals, by the same attorney, with consents, on the same issue of fees, are currently pending in the Circuit Court. The issue of fees is a major issue of contention between the Register and the majority of the Court as evidenced by the Register’s attempt, twice, to file memoranda in support of appellants’ appeals. Both times the Circuit Court Judge denied his motion and added, “Additionally, the opinion of the Register of Wills is not required by this court for the issues that are on appeal”.

The Orphans' Court has no control over the time it takes the Circuit Court to hear appeals. Estates are, of course, kept open while on appeal. It generally takes close to a year for an appeal to the Circuit Court to be heard.

Per Estates & Trusts § 2-208 (e) “[The Register of Wills] shall make out and issue every summons, process, or order of the court and, in every respect, act under the control and direction of the court as the clerk of a court of law acts under the direction of the court of law”. The Register of Wills was elected to an administrative position. The Register's opinions about Court rulings do not and should not carry any weight, whatsoever. The Register attends none of the Court's hearings. Per Estates & Trusts § 2-208 (g) “Each register shall attend each meeting of the court”. The Register assigns a deputy register to attend in his stead. Needless to say, the Register does not sit in on deliberations. The Register is not a judge.

4. “...my office does most of the, I mean most estates only go through us, very few estates go to the Orphans' Court so you basically have orders waiting to be signed that just collect dust from week to week, and the Court doesn't sit every week either. This past year the Court only sat 41 out of the 52 weeks and so that's also a problem”. UNTRUE.

While the Court may have held only 41 days of hearings in 2021, due to the pandemic, it completed a full docket of Matters EVERY WEEK for 52 weeks, as it does every year. The Register's staff is tasked with preparing the docket. The judges are required to review all matters placed on the docket, sign rulings, and make decisions on how to proceed. The judges work on matters, including motions, accounts, letters, filings, etc. (as many as 30 per week), individually first and then as a body every single week. Matters do not, “collect dust” waiting to be signed. Judges act on all matters swiftly and conscientiously with appropriate due diligence.

Additionally, judges must prepare for hearings, participate, annually, in multiple judicial classes and, to keep abreast, statewide and nationally, attend many quarterly, biannual and annual meetings, serving on committees and as officers: The Joint Meeting (with an Assistant Attorney General, State Comptroller Representative, Maryland State Bar Association Estates and Trusts section members, Registers and Orphans' Court Judges); Maryland Association of Judges of the Orphans' Court (MAJOC); the Orphans' Court Conference (members are appointed by the Chief Judge of the Court of Appeals); and the National College of Probate Judges' Conferences.

The Orphans' Court for Howard County continues to serve its citizens well. **THEREFORE**, an Unfavorable Committee Report for House Bill 868 is requested.