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Appeal By A Court Appointed Fiduciary From An Order Of Discharge - Hundley v. Hundley

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Appeal By A Court Appointed Fiduciary From An Order Of Discharge

Hundley v. Hundley[1]

The appellants (wife and business associate of the appellee) were appointed co-committee and co-trustee of the

[1] Hundley v. Hundley, 229 Md. 393, 182 A. 2d 884 (1962).

property of the appellee when the latter was adjudged incompetent.[2] Subsequently, the appellee was adjudicated competent and the chancellor discharged the appellants and required them to account. The appellants appealed the finding of restoration and the order of discharge and accounting. The Court of Appeals dismissed the appeal and in so doing cited, inter alia, *Ensign v. Faxon*[3] which found that a guardian appointed to administer the property of an incompetent is not a person aggrieved by an order of restoration. The Maryland Court concluded that the appellants were not "a party" entitled to appeal under the Maryland statute.[4]

The right to appeal is often given to any party or person who is aggrieved by a determination;[5] however, many jurisdictions view the appeal as a procedure created by express statutory authority and require compliance with specific provisions before a party may have the right.[6] The Maryland courts have adhered to the latter view.[7] In spite of this need to have the right of appeal expressly prescribed, the Maryland statute purports to give wide latitude to the prospective appellant by giving "any party" the right to appeal.[8] The Court in the principal case refused to interpret the statute as giving any party the right to appeal. Instead, it analogized the committee to a trustee or receiver and reasoned that since a trustee or receiver is not aggrieved by a discharge order, neither is a committee. The Court, in effect, narrowed the interpretation

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[2] This finding was made pursuant to a petition filed as prescribed in 2 MD. CODE (1957) Art. 16, § 135.

[3] 224 Mass. 145, 112 N.E. 948 (1916).

[4] 1 MD. CODE (1957) Art. 5, § 6.

[5] United States v. Adamant Co., 197 F. 2d 1, 5 (1952); Record Machine & Tool Co. v. Pageman Holding Corp., 132 Cal. App. 2d 821, 283 P. 2d 724 (1955); 4 C.J.S., Appeal and Error, § 183.

[6] In re Sears Guardianship, 44 Ariz. 408, 38 P. 2d 308, 309 (1934). "An appeal is a matter of privilege granted by the Constitution or statute and not a matter of right, and if an appeal from an order, judgment or proceeding is not expressly and affirmatively granted, the right does not exist." In re Guardianship of Blackwell, 77 Cal. App. 2d 282, 175 P. 2d 44 (1946); Fitzpatrick v. Young, 160 Ky. 5, 169 S.W. 530 (1914).

[7] Johnson v. Board of Zoning Appeals, 196 Md. 400, 76 A. 2d 736 (1950); Challenge Clothes Corp. v. Polski, 181 Md. 590, 31 A. 2d 309 (1943); Brooks v. Sprague, 157 Md. 160, 145 A. 375 (1929). In MILLER, EQUITY PROCEDURE (1897) § 358, p. 433 the author states: "The right of appeal from a court of equity to the court of appeals is a statutory right and does not exist except where it is expressly given. Unless an appeal in a given case is authorized by the provisions of the code, or by subsequent statutes, it cannot be entertained."

[8] "Any party may appeal to the Court of Appeals from any final decree, or order in the nature of a final decree, entered by a court of equity." 1 MD. CODE (1957) Art. 5, § 6.

of "any party" to mean any party *aggrieved* by the outcome of the litigation.

"Aggrieved"

The need to find a party aggrieved is often required before there is a right to appeal.[9] Some jurisdictions hold that the right to appeal does not depend on an actual grievance having been suffered but on the fact that one considers himself aggrieved.[10] Statutes in other jurisdictions giving a party the right of appeal are often interpreted to mean "a party aggrieved" who may or may not be a litigant in the proceeding.[11] It has been accepted in Maryland that "a person who is not aggrieved by a determination usually has no right to appeal therefrom, though he is a party to the action."[12]

> "In legal acceptation a party or person is aggrieved by a judgment, order, or decree so as to be entitled to appeal or sue out a writ of error, whenever it operates prejudicially and directly upon his property or pecuniary rights, or interest, or upon his personal rights, and only when it has such effect."[13]

The grievance must be substantial.[14] Mere hurt feelings, disappointment, inconvenience, annoyance or discomfort will not in themselves engender a grievance[15] since the party must be "legally aggrieved."[16] The effect on the personal or property right must be immediate,[17] and there must at least be a possibility that the party has or will suffer from the judgment.[18] A fiduciary may assume various responsibilities and be vested with certain rights and duties in keeping with his manner of appointment.[19] To determine whether he is aggrieved by a determination

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[9] See authorities listed in *supra*, n. 5.

[10] Equitable Life Assur. Soc. v. Slade, 122 Conn. 451, 190 A. 616 (1937); Harrison v. Kamp, 395 Ill. 11, 69 N.E. 2d 261 (1946).

[11] Ex parte Blades, 59 Idaho 682, 86 P. 2d 737 (1939); Gats v. Gats, 87 N.Y.S. 2d 621, 275 App. Div. 771 (1949).

[12] 2 M.L.E. 76, Appeals § 82, citing Riley v. Naylor, 179 Md. 1, 16 A. 2d 857 (1940).

[13] 4 C.J.S. 559, Appeal and Error, § 183.

[14] By substantial grievance is meant the denial of a personal or property right (legal or equitable) or, an imposition of a burden or obligation. American Surety Co. v. Jones, 384 Ill. 222, 51 N.E. 2d 122 (1943).

[15] Fisher v. Sun Underwriters Ins. Co. of New York, 55 R.I. 175, 179 A. 702 (1935).

[16] State v. Superior Court for King County, 20 Wash. 2d 88, 145 P. 2d 1017 (1944).

[17] Luchenbach v. Laer, 190 Cal. 395, 212 P. 918 (1923).

[18] Waterbury Trust Co. v. Porter, 130 Conn. 494, 35 A. 2d 837 (1944).

[19] Balto. Trust Co. v. Corn Products Co., 140 Md. 557, 118 A. 139 (1922).

it is necessary to establish the relationship the fiduciary has to the litigation.

Trustee

A trustee[20] in Maryland may appeal from a decree in which his personal or his beneficiary's rights are at issue.[21] The trustee appointed by instrument is considered "interested" or aggrieved in a decree which is adverse to any personal rights he derives from the instrument,[22] whereas a trustee appointed by court decree may be personally aggrieved by a court's determination,[23] but is usually considered to be adversely affected only in his fiduciary capacity.[24]

Trustees have, with little success, attempted to appeal, in their representative capacity, from decrees discharging them.[25] Since court appointed trustees and receivers are similar, and the Maryland law regarding the discharge of receivers is more illuminating than that regarding the discharge of court appointed trustees, it is necessary to in-

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[20] "A trustee may be generally defined as a person in whom some estate, interest or power in or affecting property is vested for the benefit of another." Waldo Fertilizer Works v. Dickens, 206 Ark. 747, 177 S.W. 2d 398, 401 (1944).

[21] 2 M.L.E. Appeals, § 89.

[22] Teackle v. Crosby, 14 Md. 14, 23 (1859). "He, therefore, is not merely a receiver holding possession of the property, as the hand of the Court, but the title is actually vested in him, in trust for the use and benefit of the creditors generally, although they may not appear to be parties to the proceeding in which he was appointed." The Teackle Court found that a trustee in insolvency who is given a deed to the insolvent's property and is thus vested with title is given the right to appeal from an order rescinding the trustee's appointment.

In Offutt v. Offutt, 204 Md. 101, 102 A. 2d 554 (1954) an interest sufficient to warrant a possible grievance was found where the trustee was acting not merely as the hand of the Court, but under a deed of trust.

In Kramme v. Mewshaw, 147 Md. 535, 128 A. 468 (1925), a trustee vested with legal title under an active and continuing trust for the benefit of a life tenant and remainderman was found to have an appealable personal interest. For a discussion of the rights of a trustee appointed by instrument to appeal, see 6 A.L.R. 2d 147 (1949).

[23] In Knabe v. Johnson, 107 Md. 616, 69 A. 420 (1908) the Court appointed trustee was found to have a personal interest in the litigation where (1) the order affected the trustee's commissions or allowances or (2) the trustee was interested as a creditor in the fund to be distributed.

[24] The Knabe Court, *ibid.*, said the court appointed trustee is aggrieved in any case where the increase or diminution of the whole fund would inure to the benefit or loss of all creditors. The Court added that in a contest among creditors the trustee had no right to intervene. For a discussion of the appeal rights of a court appointed trustee, see Beilman v. Poe, 120 Md. 444, 88 A. 131 (1913); MILLER, EQUITY PROCEDURE (1897) § 356.

[25] Clarke v. O'Brien, 97 Md. 739, 56 A. 829 (1903).

vestigate the law applicable to receivers to determine if they are aggrieved by any discharge decrees.

Receivers

The receiver[26] differs from the trustee in that the latter may be appointed by the courts or by the trust instrument while the former can only be appointed by the courts. The receiver, then, is the agent of the courts and can have no interest except that which he derives from the courts. In the early case of *Estate of Rachael Colvin*[27] the Chancellor discussed the question of whether the receiver could appeal from an order removing him from office and directing him to account and deliver to the administrator of the deceased ward the personal estate and effects in the receiver's hands. The Chancellor said:

> "Now it cannot be said that an order appointing a receiver, or discharging him, has, or can have, any influence upon the rights of the parties."[28]

The Chancellor continued by defining the receiver and attempting to disclaim his right to appeal.

> "He [the receiver] is declared to be 'an officer of the court'. 'He is truly and properly the hand of the Court, but his appointment determines no right, nor does it affect the title of the property in any way; it will not prevent the running of the Statute of Limitations'. 'The holding of the receiver is the holding of the Court for him from whom the possession was taken'. In Ellicott v. The Insurance Co. this definition of the office of a receiver is quoted with approbation by the Court of Appeals and hence it is clear that he has no rights whatever and has no more authority to ask for a revision of the order removing him, than an entire stranger to the cause."[29]

The Chancellor then sought to dismiss the right of the receiver to appeal from an order discharging him and ordering him to account. He said:

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[26] "A receiver is a person appointed by a Court to take into his custody, control, and management the property or funds of another pending judicial action concerning them." 18 M.L.E., Receivers, § 1, p. 389, citing 75 C.J.S., Receivers, § 1.

[27] 3 Md. Ch. 278 (1851); Plakatoris v. Bainder, 204 Md. 223, 103 A. 2d 839 (1954); R.R. Co. v. R.R. Co., 55 Md. 153 (1880); see also, Ellicott v. Warford, 4 Md. 80 (1853).

[28] Estate of Rachael Colvin, 3 Md. Ch. 278, 300 (1851).

[29] *Id.*, p. 302.

> "But what is it to him what the Court does with the property, provided he is discharged from his responsibility as receiver?"[30]

The Court also dispensed with the argument that the receiver was the representative of those at whose instance he was appointed. It said:

> "But to view him in that light, would be to give him a character inconsistent with the nature of his office . . . How can he be the officer of the Court, and the hand of the Court, and at the same time the representative of the interests of certain of the parties to the cause?"[31]

The Court summarized by saying:

> "I hold it, therefore, to be too clear for doubt, that a receiver has no right to intermeddle in questions affecting the rights of the parties or the disposition of the property in his hands; that he cannot in any sense, or to any extent be regarded as the representative of any one or more of the parties to the cause, and that he must retire from his office, and give up the property committed to his custody, whenever required to do so by the court."[32]

The receiver therefore is not aggrieved by an order discharging him and, similarly, the court appointed trustee should have no right to appeal from such an order.

Committee (Guardian)[33]

"A [committee or] guardian is a person who legally has the care of the person or property, or both, of another person who is incompetent to act for himself. . . ."[34] The Courts impose on the committee the duty of looking after the pecuniary and personal interests of his ward[35] and make the committee the court's fiduciary in this matter. There appears to be no prior Maryland law discussing the right of the committee to appeal an order restoring his

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[30] *Ibid.*

[31] *Ibid.*

[32] *Id.*, p. 303.

[33] The terms "committee" and "guardian" are used synonymously when referring to the court appointed fiduciary who cares for the person and property of an incompetent. In Re Musczak's Estate, 92 N.Y.S. 2d 97 (1949); Carlton v. Miller, 114 Cal. App. 272, 299 P. 738 (1931).

[34] 11 M.L.E., Guardian & Ward, § 1, citing 39 C.J.S., Guardian and Ward, § 1.

[35] Sparhawk v. Allen, 21 N.H. 9 (1850).

ward to capacity and discharging him,[36] while a conflict exists in other jurisdictions.[37]

The leading jurisdiction for the view that a committee [guardian] can appeal an order of restoration and discharge is the State of Washington. In the case of *In re Boyers Estate*[38] the court cited RULING CASE LAW[39] which states that the guardian has such an interest in a judgment or decree affecting the estate of his ward as entitles him to appeal therefrom. The Court also adopted reasoning set forth in *State v. Cranney*[40] which states that "[i]f a party has sufficient interest to make him a party to an action he has sufficient interest to appeal should the judgment be against him." The Court reasoned that the guardian could appeal since he does so in his representative capacity. The instant Maryland case found that a committee could not appeal because it would be appealing only in a representative capacity. The jurisdictions are, therefore, reaching opposite results from a similar basis.

There are several weaknesses in the arguments of the *Boyers* case which would make it questionable as an authority. First, the Court cited no authority from other jurisdictions supporting its position. Second, the two Washington cases cited by the Court to support its position did not involve an appeal from an order of restoration and discharge.[41] Third, the quote from RULING CASE LAW in

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[36] In Slattery v. Smiley, 25 Md. 389 (1866), the Court of Appeals discussed removal of a guardian for cause. The Court allowed the guardian's appeal without deciding if appellant was aggrieved and by relying on an old section of the Code. There was no restoration order or accounting order as in the principal case. See also Owen v. Pyle, 115 Md. 400, 80 A. 1007 (1911) and MacGill v. McEvoy, 85 Md. 286, 37 A. 218 (1897), both involving a guardian discharged for alleged misconduct. A right of appeal was granted in both cases.

[37] In re Boyers Estate, 108 Wash. 565, 185 P. 606 (1919) a guardian was given the right to appeal a restoration and discharge order. Many states give the guardian the right to appeal by statute and thereby avoid the controversy and the necessity of determining whether the guardian is aggrieved. In re Sears' Guardianship, 44 Ariz. 408, 38 P. 2d 308 (1934); In re Guardianship of Blackwell, 77 Cal. App. 2d 282, 175 P. 2d 44 (1946); Fitzpatrick v. Young, 160 Ky. 5, 169 S.W. 530 (1914); State v. Skinker, 344 Mo. 359, 126 S.W. 2d 1156 (1939).

Other states give the guardian the right to proceed by a writ of certiorari instead of appeal. See, In re Swicker's Estate, 324 Mich. 643, 37 N.W. 2d 657 (1949); In re Sylivant, 212 N.C. 343, 193 S.E. 422 (1937).

In Wattrich v. Blakney, 151 Me. 289, 118 A. 2d 332 (1955) and in Ensign v. Faxon, 224 Mass. 145, 112 N.E. 948 (1916) the right to appeal the restoration and discharge order was denied the guardian.

[38] *Supra*, n. 37.

[39] 2 RULING CASE LAW, § 35, p. 55.

[40] 30 Wash. 594, 71 P. 50 (1902).

[41] In re Wetmore, 6 Wash. 271, 33 P. 615 (1893); State v. Cranney, *supra*, n. 40.

the opinion does not deal with the problem presented in the *Hundley* appeal.

The more recent Washington case of *Pheiffer v. Pheiffer*[42] decided that a guardian had no appealable interest from an order of restoration and discharge alone, but that this order together with one requiring a complete accounting gives the guardian an appealable interest.

Massachusetts is probably the leading jurisdiction for the view that a guardian as such has no right to appeal from an order of restoration and discharge.[43] The *Ensign v. Faxon* Court used strong language to deny the appeal. It said:

> "A guardian of an insane ward has no right to appeal from a decree of the probate court discharging him from his trust as guardian on the ground that his ward is no longer insane. The guardian is not 'a person who is aggrieved' by such a decree . . . 'In order to give a right of appeal it must appear that the party appealing has some pecuniary right, which is immediately or remotely affected or concluded by the decree appealed from.' * * * The guardian of an insane person fails in every respect of meeting this test as applied to a decree to the effect that his ward is sane. Manifestly, he has no personal right."[44]

Conclusion

The more persuasive opinions seem to support the principal Maryland case in denying the right of appeal to a committee discharged by an order of restoration since by the decision the committee was not found to be aggrieved as a court appointed fiduciary.[45] As court appointed fiduciaries, the appellants in the *Hundley* case were subject to the control of the Court. The Court created the office and outlined its functions, and there is no authoritative dispute that the Court could terminate the office. Technically, by this view, the appellants had no

[42] 10 Wash. 2d 703, 118 P. 2d 158 (1941).

[43] Ensign v. Faxon, *supra*, n. 37; see also Hirshson v. Gormley, 332 Mass. 130, 76 N.E. 2d 6 (1947).

[44] *Supra*, n. 37, 949-950. The Maine case of Wattrich v. Blakney, *supra*, n. 38, is a strong opinion concurring with the Massachusetts view. It is directly on point with the Hundley case and has been decided recently.

[45] It has similarly been found that an administrator who has been duly discharged has no right to appeal. Parkman v. Courson, 103 Ind. App. 206, 5 N.E. 2d 979 (1937). Maryland will not allow an executor or administrator to "appeal in his representative capacity from a determination in which he has no interest and by which he is not aggrieved in such capacity." 2 M.L.E. 82, Appeals, § 86, citing Wlodarek v. Wlodarek, 167 Md. 556, 175 A. 455 (1934).

legal existence when they attempted to appeal. Thus, how could they be sufficiently legally aggrieved to meet the prerequisites necessary for the right to appeal to exist?

An argument, with equitable merit, mentioned by the Washington court in *In re Boyers Estate*,[46] stressed that the guardian was appealing in his representative and not personal capacity. That Court may be suggesting that it would be inequitable for a representative of an individual or an estate to be prevented from protesting an erroneous restoration order. It emphasized that if a person has sufficient representative interest to be a party to an action, he has sufficient representative interest to appeal a judgment against him. It is not without possibility that a lower court's decree could be in error and that, for this reason, the decree of the lower court should be reviewed by a higher tribunal. The representative, it follows, would remain in his office to prosecute the appeal.

There are considerations, however, which refute this argument. It is stated in *Ensign v. Faxon*[47] that no harm can come from refusal to recognize the guardian as a person aggrieved by such a decree. The Massachusetts court based its approach on the assumption that one fair hearing on the subject of competency would be had. More important, it reasoned that the "heirs presumptive" of the incompetent had a right of appeal and would thus protect against an erroneous decree, and finally, that a mistake in declaring a guardianship ended when it should be continued could be readily corrected by a new appointment without delay.

The Court in the *Hundley* case did not deem it necessary to consider the question of the appellants' right to appeal as next friends or original petitioners since the appeal was brought by them only in their representative capacity.

A next friend acts for someone who is not capable of instituting legal action independently.[48] He is then, in effect, the alter ego of the person he is representing. In this case, had the appellants appealed as next friends, the appeal would have been that of the appellee. This would have produced the anomalous situation of the appellee (through his next friend) appealing a lower court's decree from which he received all of the relief he had requested. Such a position would seem to be untenable, and no au-

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[46] *Supra*, n. 37.

[47] *Supra*, n. 37.

[48] In Re Beghtel's Estate, 236 Iowa 953, 20 N.W. 2d 421, 424, 161 A.L.R. 1384 (1945).

thority in Maryland allowing such an appeal has been found.

The appellants might possibly have appealed as original petitioners.[49] Statutory provisions giving a right of appeal to the Maryland Court of Appeals to a party to an equitable action have been construed as not restricting the right to the technical parties to the action, and a person interested in the subject matter of the action may maintain an appeal even though he was not one of the original parties to it.[50] It would have been a matter of evidence and argument for the appellants, as original petitioners, to show how, as wife and business associate, they would be personally interested or aggrieved by an erroneous decree which restored the appellee to capacity.

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[49] In Wattrich v. Blakney, *supra*, n. 37 the court stated that the petitioner, guardian and sister of the appellee, could not appeal in her individual capacity since no personal aggrievance was asserted by the petitioner. From this it seems that the petitioner must expressly assert how he was personally aggrieved.

[50] Weinberg v. Fanning, 208 Md. 567, 119 A. 2d 383 (1956); Lickle v. Boene, 187 Md. 579, 51 A. 2d 162 (1947); Preston v. Poe, 116 Md. 1, 81 A. 178 (1911); Hall v. Jack, 32 Md. 253 (1870). The appellants, as original petitioners would, of course have had to make a timely appeal, i.e., within 30 days from the date of the lower court's judgment pursuant to MD. RULE 812a.