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RECENT DEVELOPMENT

***DOWNES v. DOWNES*: A COURT DOES NOT HAVE DISCRETION TO GRANT A SURVIVING SPOUSE AN ADDITIONAL EXTENSION OF TIME IN WHICH TO ELECT THE STATUTORY SHARE IF A PREVIOUS EXTENSION EXPIRED PRIOR TO THE NEW REQUEST**

By: Brooke Marli Hytovitz

The Court of Appeals of Maryland held that when a previous extension has expired, a court does not have discretion to grant a surviving spouse an additional extension of time in which to elect the statutory share. *Downes v. Downes*, 388 Md. 561, 880 A.2d 343 (2005). In affirming the lower court's decision, the Court of Appeals held extensions of time must be granted before the previous extension expires even though § 3-206(a) of the Estates and Trusts Article and Maryland Rule 6-411(c) provides the court with discretion. *Id.* at 565, 880 A.2d at 345.

Eldridge Downes ("Eldridge") died on October 23, 1997, leaving Petitioner Shirley Downes ("Shirley") as his surviving spouse. In his will, Eldridge left all of his tangible personal property to Shirley. Eldridge also created two trusts, a marital trust for Shirley and a residuary trust for Eldridge's parents and his son, Respondent Gregory Downes ("Gregory"). Shirley was appointed as personal representative and therefore had to file a report to the orphans' court valuing Eldridge's estate.

According to Maryland Code § 3-203 of the Estates and Trusts Article, Shirley, as the surviving spouse, could either elect to take her statutory share of Eldridge's estate or take the property that was devised to her in the will. In June 1998, one day prior to the decision deadline, Shirley was granted a three month extension in order to determine the estate's value. The court then granted three more extensions pursuant to timely requests. Shirley requested a fifth extension after the fourth extension had already expired. The request was subsequently denied in July 1999.

In March 2001, Shirley appealed the denial of the fifth extension request to the circuit court. The court dismissed Shirley's appeal,

finding that under § 12-502 of the Courts and Judicial Proceedings Article, the denial of the fifth extension was a final, appealable judgment and Shirley's appeal was untimely.

Shirley appealed to the Court of Special Appeals of Maryland in November 2002 arguing the circuit court has more authority to grant the extension than the orphans' court because of its *de novo* review powers. The Court of Special Appeals remanded the case to the circuit court because Shirley's claim in regard to her husband's estate was not fully adjudicated and there was no final, appealable order. On remand, in the circuit court, Shirley argued it was unjust to deny the extension because she needed more time to make her decision. The circuit court was not convinced and held that once the fourth extension expired, the circuit court did not have the authority to grant another extension, as a legislative change was necessary to accomplish this goal.

Shirley again appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court's decision and held that according to the relevant statute and Rule, neither an orphans' court nor a circuit court can grant an extension for a spousal election when the previous extension has already expired. The Court of Appeals of Maryland granted certiorari to consider whether an orphans' court, or a circuit court on appeal, has the discretion to grant a surviving spouse an extension of time to make a statutory election under §§ 3-203(a) and 3-206(a) of the Estates and Trusts Article and Maryland Rule 6-411(c) when the previous extension has expired.

The Court first looked at the statutory construction of § 3-206(a) of the Estates and Trusts Article and Maryland Rule 6-411(c). *Id.* at 571, 880 A.2d at 348. The Court found that the specific words used in the statute ("extend the time for election, *before its expiration*") and the rule ("each extension is granted before the expiration of the period originally prescribed") are clear and unambiguous. *Id.* at 572, 880 A.2d at 349. Therefore, the orphans' court discretion to grant an extension is clearly conditioned on it being timely made. *Id.*

After determining the existence of this limitation, the Court then addressed three issues stemming from said existence. *Id.* at 572, 880 A.2d at 349. First, the Court considered whether the limitation applies to the circuit courts when there is a *de novo* appeal from the orphans' court. *Id.* According to § 12-502(a)(1) of the Courts and Judicial Proceedings Article, when there is an appeal to the circuit court, it should be heard *de novo* "as if there had never been a prior hearing or

judgment by the orphans' court,' and that judgment is to be 'given according to the equity of the matter.'" *Id.* at 573, 880 A.2d at 349-50.

The Court found the limitation applies not only to the orphans' court, but to the circuit court as well. *Id.* at 573, 880 A.2d at 350. The Court relied on its previous decision in *Estate of Soothcage v. King*, 227 Md. 142, 153, 176 A.2d 221, 227 (1961) and observed that "the circuit court, although expected to make its own determination, is limited to those that could properly have been made by the orphans' court." *Downes*, 388 Md. at 573-74, 880 A.2d at 350 (quoting *Kaouris v. Kaouris*, 324 Md. 687, 715, 598 A.2d 1193, 1206 (1991)). Given the orphans' court did not have the discretion to grant Shirley's fifth extension, the circuit court is therefore bound by the statutory restriction and also cannot grant the extension. *Downes*, 388 Md. at 574, 880 A.2d at 350.

Although Shirley agreed that the statute and rule both required the extension be granted before the previous one expired, she argued this instruction was not mandatory or jurisdictional but only directory. *Id.* at 571, 880 A.2d at 348-49. Shirley also contended that since the instruction was only directory, the circuit court had the option to grant her extension although the previous one had expired. *Id.* at 571, 880 A.2d at 349.

The second issue discussed by the Court was whether the limitation described in the statute and rule is jurisdictional in nature, therefore permitting the circuit court to ignore the limitation and grant an untimely extension. *Id.* at 574, 880 A.2d at 350-51. The Court relied on its previous opinions where it defined jurisdiction as "the power to render a judgment over that class of cases within which a particular one falls." *Id.* at 575, 880 A.2d at 350 (quoting *Carey v. Chessie Computer Servs.*, 369 Md. 741, 756, 802 A.2d 1060, 1069 (2002)).

The Court held the condition that an extension be granted before the previous one expired is not a jurisdictional impediment, but provides a limit on the exercise of the specific jurisdiction. *Downes*, 388 Md. at 575, 880 A.2d at 351. Therefore, if the Court determined on appeal that the lower court improperly granted an extension of time, the decision would be reversed. *Id.* The Court reasoned that if a jurisdictional extension was allowed, it would permit a challenge to the title of property for years to come. *Id.*

The final issue addressed by the Court was whether the limitation is mandatory or whether the court has discretion to either grant the extension or excuse its untimeliness. *Id.* at 576, 880 A.2d at 351. It held that a court is expressly prohibited from ignoring the specific

limitation noted in the statute and rule, thus leaving the court only one option – to deny the extension. *Id.* at 576, 880 A.2d at 352.

The Court noted that a surviving spouse's entitlement to repudiate a will has long been strictly construed. *Id.* at 577, 880 A.2d at 352 (citing *Barrett v. Clark*, 189 Md. 116, 122, 54 A.2d 128, 131 (1947)). Although Shirley properly contends the law is different now from the time of *Barrett*, the law continues to strictly construe the ability to renounce the will. *Downes*, 388 Md. at 577-78, 880 A.2d at 352-53. Noting its previous decision in *Parshley v. Mott*, 241 Md. 577, 578, 217 A.2d 300, 301 (1996), the Court also acknowledged that the law today still favors "the expeditious administration and early settlement of Estates." *Downes*, 388 Md. at 578, 880 A.2d at 353.

The Court of Appeals' holding in *Downes* reinforces the necessity for a timely request in which a surviving spouse can elect the statutory share. The clear and unambiguous meanings of the statute and rule are strictly construed and prove the courts' discretion is limited by the specific restriction for a timely request. By implementing the limitation on a surviving spouse, the Court has shown there must be limits on how long this process can be delayed. If the restrictions are not met, the court has no other option but to deny untimely requests.