

SUPERIOR COURT OF PENNSYLVANIA

In re: Mary D. Avery, an Alleged Incapacitated Person; Appeal of
Jimmy Dorsey and Karen L. Dorsey

2026 Pa. Super. 124 (Superior Court of Pennsylvania 2026) · No. 191 MDA 2025 · Decided June 16, 2026

SUMMARY

The Pennsylvania Superior Court considers an appeal from an order denying Jimmy and Karen Dorsey’s petition for reimbursement of attorneys’ fees and costs from Mary D. Avery’s guardianship estate. The court holds that the order is immediately appealable under Pennsylvania Rule of Appellate Procedure 342(a)(5) and (6). Because the record raises unresolved questions concerning Pennsylvania, New York, and South Carolina jurisdiction over Avery’s capacity status and guardianship, the court remands for an evidentiary hearing and factual findings.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Kunselman, J.; McLaughlin, J.; Lane, J.
JURISDICTION	Pennsylvania Superior Court
DECIDED	June 16, 2026
DOCKET	191 MDA 2025
DISPOSITION	remanded
PROCEDURAL POSTURE	The Dorseys appealed an interlocutory order denying their petition to charge Mary Avery's guardianship estate \$79,790.99 for attorneys' fees and costs. The Superior Court retained appellate jurisdiction but remanded for an evidentiary hearing concerning whether Pennsylvania had jurisdiction under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
STANDARD OF REVIEW	Questions of appellate jurisdiction and statutory interpretation are reviewed de novo with a plenary scope of review. Factual findings concerning domicile, intent, and temporary absence must be made by the orphans' court as factfinder.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jimmy Dorsey, Karen L. Dorsey v. Mary D. Avery, Kecia Dorsey-Rosa

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an orphans' court order denying a petition for reimbursement of legal fees from a ward's estate is immediately appealable as of right.
2. Whether the orphans' court lacked jurisdiction over Avery's capacity status and estate, rendering its orders void ab initio.
3. Whether the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act governs in rem jurisdiction in adult guardianship proceedings and permits the appellate court to raise the issue sua sponte.
4. Whether Pennsylvania was Avery's home state under the UAGPPJA when the Dorseys filed their guardianship petition, including whether her absence in New York was temporary.

HOLDINGS

1. An orphans' court order denying a petition by alleged creditors for attorneys' fees and costs from a guardianship estate is immediately appealable as of right under Pennsylvania Rule of Appellate Procedure 342(a)(5), because it determines creditor status, and under Rule 342(a)(6), because it determines an interest in personal property.
2. A court's lack of in rem or quasi in rem jurisdiction over the res is non-waivable and may be raised sua sponte on appeal; a judgment entered without in rem jurisdiction is void ab initio.
3. The UAGPPJA governs in rem jurisdiction over an adult's capacity status and guardianship estate, rather than subject-matter or personal jurisdiction.
4. The record was insufficient to determine whether Pennsylvania was Avery's home state under the UAGPPJA because she left Pennsylvania before completing six consecutive months there, and the orphans' court had not determined whether her move to New York was intended as a temporary absence or a permanent change of domicile.

KEY QUOTATIONS

"Because a judgment without jurisdiction is no judgment at all (see Whitmer, supra), a court's lack of in rem jurisdiction over the res, like lack of subject-matter jurisdiction, is a non-waivable issue that this Court may raise sua sponte." (at 39)

"We hold that, because the UAGPPJA governs the in rem jurisdiction of courts, this Court may, sua sponte, raise the issue of whether the Orphans' Court of Berks County had jurisdiction over Ms. Avery's capacity status." (at 56)

“Accordingly, we must remand this case to the orphans’ court to decide, as sole finder of fact, whether Ms. Avery intended her trip to New York to be a “temporary absence” or to establish a new domicile.” (at 64)

FACTUAL BACKGROUND

Mary Avery lived in South Carolina for approximately nineteen years before her son and daughter-in-law brought her to Pennsylvania in May 2021. She remained in Pennsylvania for approximately 178 days, including time in the Dorseys' home and at an assisted-living facility, before leaving with her daughter for New York on November 20, 2021. The Dorseys filed a petition for emergency co-guardianship in Berks County on December 10, 2021, while Avery was in New York. The orphans' court later declared Avery incapacitated and appointed the Dorseys as permanent co-guardians, then denied their petition for reimbursement of attorneys' fees and costs.

PROCEDURAL HISTORY

The Berks County Orphans' Court appointed the Dorseys as co-guardians after declaring Avery incapacitated, later denied their petition for reimbursement of attorneys' fees and costs, and the Dorseys appealed. The Superior Court initially issued a rule to show cause concerning interlocutory appealability, discharged the rule, and deferred the issue. On its own initiative, the Court identified a potential interstate jurisdictional defect and ordered supplemental briefing before remanding for factual findings.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Berks County Orphans' Court must conduct an evidentiary hearing and determine whether Avery intended her departure to New York to be a temporary absence or to establish a new domicile. If the absence was temporary, the court must return the record so the Superior Court can address the merits. If the absence was permanent, the court must make factual findings concerning other possible UAGPPJA jurisdictional bases, including significant-connection-state and appropriate-forum factors, and return the record for the Superior Court's legal determination. The Superior Court retained jurisdiction.

CASES CITED

- Estate of A.J.M., 308 A.3d 844 (Pa. Super. 2024), appeal denied, 325 A.3d 1024 (Pa. 2024)
- In re Estate of Liverant, 2021 WL 630981 (Pa. Super. 2021) (non-precedential)
- Whittaker v. Lu, 323 A.3d 871 (Pa. Super. 2024)
- Commonwealth v. Gaines, 127 A.3d 15 (Pa. Super. 2015) (en banc)
- Crespo v. Hughes, 292 A.3d 612 (Pa. Super. 2023)
- Goldman v. McShain, 247 A.2d 455 (Pa. 1968)
- In re Edmundson, 167 A. 502 (Pa. Super. 1933)
- In re Estate of DuPuy, 96 A.2d 318 (Pa. 1953)
- In re Nicholls' Guardianship, 86 Pa. Super. 38 (1925)

- Commonwealth v. Valentine, 928 A.2d 346 (Pa. Super. 2007)
- Domus, Inc. v. Signature Building Systems of PA, LLC, 252 A.3d 628 (Pa. 2021)
- In re Estate of Forte, 352 A.3d 1024 (Pa. Super. 2026)
- Grimm v. Grimm, 149 A.3d 77 (Pa. Super. 2016), disapproved on other grounds by Marion v. Bryn Mawr Trust Co., 288 A.3d 76 (Pa. 2023)
- Mar-Eco, Inc. v. T & R & Sons Towing & Recovery, Inc., 837 A.2d 512 (Pa. Super. 2003)
- Bank of Pennsylvania v. G/N Enterprises, Inc., 463 A.2d 4 (Pa. Super. 1983)
- In re Clark's Estate, 119 A. 590 (Pa. 1923)
- Rose v. Himely, 8 U.S. 241 (1808)
- Hudson v. Guestier, 8 U.S. 293 (1808)
- Hudson v. Guestier, 10 U.S. 281 (1810)
- Hanson, Executrix, et al. v. Denckla et al., Hanson v. Denckla, 357 U.S. 235 (1958)
- Overby v. Gordon, 177 U.S. 214 (1900)
- Whitmer v. Whitmer, 365 A.2d 1316 (Pa. Super. 1976)
- In re Edmundson, 173 A. 708 (Pa. Super. 1934)
- In re M.D.A., 2023 WL 8370234 (Pa. Super. 2023) (non-precedential)
- McIlwain v. Saber Healthcare Group, Inc., LLC, 208 A.3d 478 (Pa. Super. 2019)
- Guardianship of Sanders, 143 A.3d 795 (Me. 2016)
- In re Estate of Kusmanoff, 83 N.E.3d 1144 (Ill. App. Ct. 2017)
- In re Estate of Hanson, 848 S.E.2d 204 (Ga. Ct. App. 2020)
- In re M.E., 2023 WL 7203355 (W. Va. Ct. App. 2023) (non-precedential)
- In re Interest of Diaz, 560 P.3d 434 (Colo. App. 2024)
- In re Matter of Hickey, 2024 WL 4357415 (Ariz. Ct. App. 2024) (non-precedential)
- Williams v. Jeffcoat, 906 S.E.2d 588 (S.C. 2024)
- Steen-Jorgensen v. Huff, 835 S.E.2d 707 (Ga. Ct. App. 2019)
- R.M. v. J.S., 20 A.3d 496 (Pa. Super. 2011)
- Bouzos-Reilly v. Reilly, 980 A.2d 643 (Pa. Super. 2009)
- Petow v. Warehime, 996 A.2d 1083 (Pa. Super. 2010)
- Commonwealth v. Perez, 941 A.2d 778 (Pa. Commw. Ct. 2008)