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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190700

Frederick Tildon Skelton IV and Brian Rutledge Skelton

v.

**Evangela R. Taylor Skelton, as the personal representative of
the Estate of Brian L. Skelton, Sr., et al.**

**Appeal from Jefferson Probate Court, Bessemer Division
(No. 16-48074)**

1190917

Frederick Tildon Skelton IV and Brian Rutledge Skelton

v.

**Evangelina R. Taylor Skelton, as the personal representative of
the Estate of Brian L. Skelton, Sr., et al.**

**Appeal from Jefferson Circuit Court, Bessemer Division
(CV-16-900625)**

SELLERS, Justice.

These consolidated appeals involve the Frederick Tildon Skelton, Jr., Family Trust ("the trust") and its primary asset, shares of stock in South Haven Corporation ("South Haven"). In appeal no. 1190700, Frederick Tildon Skelton IV and Brian Rutledge Skelton challenge the May 4, 2020, judgment of the Jefferson Probate Court, Bessemer Division ("the probate court"), terminating the trust. We affirm that judgment. In appeal no. 1190917, those same parties challenge the July 17, 2020, judgment of the Jefferson Circuit Court, Bessemer Division ("the circuit court"), dismissing their claims relating to the administration of the trust and their derivative claims asserted on behalf of South Haven. We reverse the judgment of the circuit court and remand the case for further proceedings consistent with this opinion.

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I. Facts

Frederick Tildon Skelton, Jr. ("Frederick Jr."), died in June 1979. He was survived by his wife, Rheta S. Skelton ("Mrs. Skelton"), and their four children: Brian Lee Skelton, Sr. ("Brian Lee"), Frederick Tildon Skelton III ("Frederick III"), Loretta J. Skelton ("Loree"), and Cindy Marie Skelton Council ("Cindy"). During his lifetime, Frederick Jr. owned all the stock of South Haven, which operated the South Haven Nursing Home. Upon his death, the trust was to receive approximately 49% of the South Haven stock. The trust instrument named Mrs. Skelton as the original trustee of the trust and provided that she was to receive the net income of the trust during her lifetime. Upon her death, the trust was to terminate and its assets distributed to the Skeltons' children or to their children's issue, per stirpes.

Mrs. Skelton died in 2015; she was predeceased by Frederick III and Cindy. Frederick III had two children, Brian Rutledge Skelton and Frederick T. Skelton IV (referred to collectively as "the nephews"); Cindy had one child, Joshua M. Council ("Joshua"); Brian Lee had three

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children, Olivia Skelton, Taylor Skelton, and Brian Skelton, Jr.; and it is unknown whether Loree had any children.

After Mrs. Skelton died, Brian Lee, who was serving as South Haven's president at the time, became the successor trustee of the trust. However, Brian Lee died in July 2016, before fully discharging his duties as trustee by dividing the trust property and making a final distribution of the trust corpus to the remainder beneficiaries of the trust. Brian Lee's widow, Evangela R. Taylor Skelton ("Angel"), was appointed as the personal representative of Brian Lee's estate. After Brian Lee's death, there was no acting trustee, but it is undisputed that the remainder beneficiaries of the trust are: Brian Lee's estate, Joshua, the nephews, and Loree (referred to collectively as "the beneficiaries").

In July 2016, Angel, as personal representative of Brian Lee's estate, commenced an action in the probate court ("the probate-court action"), petitioning the probate court to appoint a successor trustee for the trust and, relevant to that action, to direct the trustee to exercise control over the South Haven stock, or any other ownership interest in South Haven,

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held by the trust.¹ The beneficiaries were parties to the probate-court action. The probate court thereafter entered an order appointing Sidney C. Summey, Jr., as successor trustee ("the trustee") and authorizing him to exercise control of all trust assets, including any stock in South Haven, to achieve a final settlement and/or to wind up the affairs of the trust by consent of the beneficiaries or by judicial means. The probate court retained jurisdiction over the trust through final settlement.

In September 2016, Loree, individually and on behalf of South Haven, commenced an action in the circuit court against Angel, individually and in her capacity as the personal representative of Brian Lee's estate ("the circuit-court action"). In that action, Loree alleged that Brian Lee, while an officer, director, and shareholder of South Haven, and Angel had misappropriated South Haven's assets for their personal benefit to the detriment of the other shareholders or putative shareholders of the corporation. Joshua and the trustee were added as

¹See § 19-3B-704(b), Ala. Code 1975 (providing that "[a] vacancy in a trusteeship must be filled if the trust has no remaining trustee").

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parties to the circuit-court action.² The nephews filed a motion to intervene in the circuit-court action to assert claims on behalf of South Haven against Loree, as well as Angel, in her capacity as the personal representative of Brian Lee's estate; the nephews asserted that both Brian and Loree, while officers, directors, and shareholders of South Haven, had misappropriated South Haven's assets for their personal benefit to the detriment of the other shareholders or putative shareholders of the corporation. However, the circuit court denied that motion because the nephews had failed to assert that they were shareholders of South Haven at the time of the alleged transactions they challenged. See Rule 23.1, Ala. R. Civ. P. (requiring plaintiffs to allege their beneficial interests in the corporation subject to the derivative action). The parties to the circuit-court action thereafter participated in mediation from August 2017 until August 2018. Before that mediation ensued, the trustee informed all parties that, to fulfill his fiduciary obligations to all the beneficiaries, he would not agree to any settlement unless that settlement was approved

²Although the trustee was added as a party to the circuit-court action, he did not assert any derivative claims on behalf of South Haven.

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by either (1) all the beneficiaries, including the nephews, or (2) both the probate court and the circuit court. Following mediation, Loree, Joshua, and Angel, individually and as personal representative of Brian Lee's estate, reached a proposed settlement. The nephews opposed that settlement, however; thus, it was never finalized.

In November 2017, the nephews, as beneficiaries of the trust, filed a petition in the probate-court action, asserting various claims and counterclaims and seeking affirmative relief relating to the administration of the trust³ (referred to collectively as "the trust claims"), including requesting that the probate court:

"A. Continue to assume exclusive jurisdiction over all matters involving the administration of the Trust;

"B. Issue instructions to the Successor Trustee for the Trust to undertake all actions necessary to the winding-up of the Trust, including taking all such actions as may be appropriate to administer the Trust pursuant to the terms of [Frederick Jr.'s] Will and prudent fiduciary practice, including, without

³In addition to asserting claims against the other beneficiaries, the nephews' petition also asserted claims against Loree, in her capacity as the trustee of the Rheta S. Skelton Revocable Trust and in her capacity as the personal representative of the Estate of Rheta S. Skelton.

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limitation, exercising control over the Trust's assets, including the stock or other ownership interest in [South Haven];

"C. Enter a declaratory judgment regarding the assets of the Trust, including a judgment that the Trust retains ownership and voting rights for the stock of [South Haven];

"D. Enter a ... judgment [declaring] that[, during her lifetime, Mrs. Skelton] breached her fiduciary duties as Trustee of the Trust ...;

"E. Enter a judgment against [Mrs. Skelton's estate] for breach of fiduciary duty as Trustee of the Trust by invading the Trust and removing valuable principal assets of the Trust for her own personal benefit ...;

"F. Enter a ... judgment [declaring] that the transfer of substantially all of [Mrs. Skelton's assets] to [the Rheta J. Skelton Revocable Trust] was a fraudulent conveyance ...;

"G. Require [Mrs. Skelton's estate] and/or [the trustee] to provide a full and complete accounting of the Trust's assets ...;

"H. Enter a judgment in favor of [the nephews] and against [Loree, individually; Angel, in her capacity as personal representative of Brian Lee's estate]; and [Mrs. Skelton's estate], jointly and severally, [for damages] ...;

"I. Enter a judgment in favor of the Trust ... such that the Trust distributions to the remainder beneficiaries are restored ...;

"J. Enter a ... judgment [declaring] that the [trustee] has a fiduciary duty to pursue and enforce the derivative claims [asserted in the circuit-court action]"

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In October 2018, Angel, as the personal representative of Brian Lee's estate; Loree, individually; and Joshua petitioned the probate court to terminate the trust, to distribute its assets, and to discharge the trustee. The nephews opposed the termination of the trust on the basis that they would be prohibited from pursuing their trust claims. The nephews also objected to the trustee's being discharged because, they believed, he had a duty to pursue the trust claims, as well as derivative claims that could be asserted on behalf of South Haven in the circuit-court action.

In November 2018, the trustee filed a motion in the probate-court action seeking to resign as the trustee of the trust. In that motion, the trustee cited various compelling reasons, including:

"To date, the Trust has not been funded and its assets are illiquid. [The trustee's] only means of raising sufficient capital to fund the Trust necessarily involves a sale of Trust assets, which primarily include shares of South Haven Corporation. However ... the ownership of the shares of South Haven Corporation has been at issue in this case pending in [the probate court] as well as in the [circuit-court action]. In various pleadings, certain beneficiaries have taken the position that there are no shares of South Haven Corporation remaining in the Trust, while other beneficiaries, including [the nephews], have refused to certify in pleadings that they are, in fact, owners of the shares. Certain beneficiaries

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purport to have resolved the issues between and among them, while other beneficiaries object to that resolution. As a result, the answer to the question of what [the trustee] could do in his role as trustee to fund the Trust and address the competing claims and issues of the remainder beneficiaries is far from clear If, as certain parties [i.e., the nephews] have contended, [the trustee] cannot resign, then his compelled continued service as Trustee and active participation in current and future litigation will be at the risk of great personal loss to [the trustee], with a significant outlay of resources, time, and expenses potentially offset by, at best, the possibility of future reimbursement by the currently unfunded Trust."

(Footnotes omitted.)

On March 7, 2019, the probate court entered an order discharging the trustee on the grounds that the trust was currently underfunded; that the assets of the trust were illiquid; that the beneficiaries, because of irreconcilable differences, continued to engage in protracted and costly litigation; and that the trust was without sufficient funds to sustain that litigation. To protect the nephews' rights, the probate court ordered that they be substituted for, or otherwise "stand in the shoes" of, the trustee in the event they elected to assert derivative claims on behalf of South Haven in the circuit-court action. The probate court explained in its order that the nephews could not assert any derivative claims on behalf of South

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Haven in the probate-court action because South Haven was not a party to that action but that, because South Haven was a party to the circuit-court action, such derivative claims could be appropriately litigated in that action. Based on the probate court's order, the nephews subsequently asserted, in the circuit-court action, derivative claims on behalf of South Haven against Loree and Angel, in her capacity as the personal representative of Brian Lee's estate. Over the nephews' objection, the circuit court entered an order discharging the trustee as a party to circuit-court action and substituting the nephews in his place, pursuant to Rule 25(c), Ala. R. Civ. P.

On May 4, 2020, the probate court, following a hearing on all pending motions, entered a final judgment in the probate-court action, terminating the trust and ordering that its limited assets be distributed.⁴

⁴In its judgment, the probate court indicated that the assets of the trust "consist[ed] of approximately \$5,000 in an account with Raymond James, [and] real property in Long Beach, Mississippi." The probate court ordered that the \$5,000 be distributed to the trustee for his expenses and that Loree make reasonable efforts to sell the Mississippi property and to distribute the funds therefrom to the trustee and, if any funds remained after paying the trustee, to the beneficiaries. The probate court further indicated that the trust was holding or previously held approximately 49%

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The probate court further held that the nephews had 30 days in which to assert their trust claims in the circuit-court action. The nephews appealed. On that same day, the nephews asserted their trust claims in the circuit-court action.

On July 17, 2020, following a hearing, the circuit court entered a final judgment, dismissing the nephews' derivative claims on the basis that those claims were abated by the probate-court action. The circuit court also struck, without explanation, all pleadings filed by the nephews after October 23, 2019, including the pleading asserting their trust claims. The nephews appealed. This Court consolidated the appeals from the May 4, 2020, probate-court judgment and the July 17, 2020, circuit-court judgment.

II. Standard of Review

of the outstanding shares of stock in South Haven but that there existed a dispute about whether those shares had been distributed or whether they remained assets of the trust. The probate court stated that, because of its ruling terminating the trust, any issue concerning the South Haven stock and whether it remained an asset of the trust was moot. The probate court presumably reasoned that, because South Haven was a party to the circuit-court action, any dispute regarding the stock could be litigated in that action.

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These appeals present pure questions of law, which we review de novo. Watson v. University of Alabama Health Servs. Found., 263 So. 3d 1030 (Ala. 2018).

III. Discussion

1. Appeal No. 1190700 - The Probate-Court Action

The nephews contend that the probate court erred in terminating the trust because, they say, it deprived them of the opportunity to litigate their trust claims in that court. The nephews specifically assert that the probate court lacked authority to dismiss their trust claims merely because the probate court believed it would be more convenient for those claims to be litigated in the circuit-court action. Under the circumstances presented here, we cannot agree. To begin, the litigation giving rise to these appeals has been ongoing in the probate court since July 2016 and in the circuit court since September 2016. This is the third time many of the parties have been before this Court concerning issues arising out of the same general factual situation.⁵ Next, and importantly, the probate

⁵Ex parte Skelton (No. 1180555, Aug. 23, 2019), 312 So. 3d 8 (Ala. 2019) (table); and Ex parte Skelton, 275 So. 3d 144 (Ala. 2018).

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court terminated the trust and discharged the trustee because the parties had engaged in, and continued to engage in, costly and protracted litigation that the trust was unable to fund. Simply put, the assets of the trust were insufficient to compensate the trustee, who not only had been appointed to wind up the affairs of the trust but also been added as a party to the circuit-court action.⁶ A court exercising jurisdiction over the administration of a trust has the authority to terminate the trust if the court determines "that the value of the trust property is insufficient to justify the cost of administration." § 19-3B-414(b), Ala. Code 1975. This is precisely what occurred here, and the nephews make no argument that the probate court erred in terminating the trust on that basis. Rather, the nephews have taken the position throughout this litigation that the trustee had a duty to pursue, even at own his personal expense, all claims involving the administration of the trust, as well as all derivative claims that could be asserted on behalf of South Haven. Notably, to ensure that

⁶The probate court determined that the trustee and his counsel were due to be compensated for work and expenses in the amount of \$318,249.50.

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the nephews were able to pursue their trust claims, the probate court held that they had 30 days in which to reassert those claims in the circuit-court action. In its judgment terminating the trust, the probate court explained that allowing the nephews to reassert their trust claims in the circuit-court action was appropriate because (1) the trust claims arose out of the same core of operative facts as the claims involved in the circuit-court action, (2) the trust claims required the same evidence as the derivative claims pending in the circuit-court action, (3) and the probate court and the circuit court had concurrent jurisdiction over matters relating to the administration of the trust.⁷ To further protect the nephews' rights, the probate court ordered that they be substituted for, or otherwise "stand in the shoes" of, the trustee so that they could assert derivative claims on

⁷Act No. 1144, Ala. Acts 1971, a general act of local application, applies to the Jefferson Probate Court. Section 1 of the act grants to the Jefferson Probate Court "general jurisdiction concurrent with that of the Circuit Courts of this State, in equity, in the administration of the estates of deceased persons, minors and insane or non compos mentis persons, including testamentary trust estates." See also § 19-3B-203(b), Ala. Code 1975 (providing that "[a] probate court granted statutory equitable jurisdiction has concurrent jurisdiction with the circuit court in any proceeding involving a testamentary or inter vivos trust").

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behalf of South Haven in the circuit-court action. Finally, it is undisputed that all the beneficiaries, including the nephews, have engaged in extensive discovery in the circuit-court action, and they all agreed that the discovery in that action could be used to resolve the claims asserted in both the probate-court action and the circuit-court action. Under these circumstances, the probate court did not err in terminating the trust, subject to the nephews' ability to reassert their trust claims in the circuit-court action. We, therefore, affirm the judgment of the probate court terminating the trust and, as discussed below, agree that the circuit court erred by refusing to adjudicate the trust claims in the circuit-court action as recommended by the probate court.

2. Appeal No. 1190917 - The Circuit-Court Action

The nephews contend that the circuit court erred in dismissing the derivative claims they asserted on behalf of South Haven in the circuit-court action on the basis that those claims were abated pursuant to § 6-5-440, Ala. Code 1975. We agree. As indicated, Loree initiated the circuit-court action by filing derivative claims on behalf of South Haven against Angel, individually and in her capacity as the personal representative of

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Brian Lee's estate. Initially, the nephews attempted to intervene in that action to assert their own shareholder derivative claims, but the circuit court denied their motion because the nephews had failed to allege that they had been shareholders at the time the alleged transactions occurred. Instead, the nephews asserted the trust claims in the probate-court action. After the probate court entered its order discharging the trustee, it ordered that the nephews be substituted for the trustee to protect their rights to assert any derivative claims on behalf of South Haven in the circuit-court action. The nephews then filed derivative claims on behalf of South Haven in the circuit-court action, were substituted as parties to that action, and engaged in discovery. However, the circuit court ultimately, and inappropriately, dismissed the nephews' derivative claims on the basis that those claims were abated by the probate-court action.

Section § 6-5-440, Alabama's abatement statute, provides:

"No plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and against the same party. In such a case, the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously, and the pendency of the former is a good defense to the latter if commenced at different times."

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This Court has explained that, pursuant to that statutory directive, " 'where two or more courts have concurrent jurisdiction, the one which first takes cognizance of a cause has the exclusive right to entertain and exercise such jurisdiction, to the final determination of the action and the enforcement of its judgments or decrees.' " Regions Bank v. Reed, 60 So. 3d 868, 884 (Ala. 2010) (quoting Ex parte Burch, 236 Ala. 662, 665, 184 So. 694, 697 (1938)) (emphasis added). In holding that the nephews' derivative claims asserted on behalf of South Haven were abated by the probate-court action, the circuit court necessarily believed that the probate court had concurrent jurisdiction to adjudicate those claims, despite the fact that South Haven was not a party to the probate-court action.

It is undisputed that the probate court had concurrent jurisdiction with the circuit court to adjudicate any claims related to the administration of the trust. However, the probate court, whose jurisdiction is limited to that conferred to it by statute, did not have jurisdiction to adjudicate claims that did not relate to the administration of the trust. Section 19-3B-201(c), Ala. Code 1975, provides that "[a] judicial

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proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights." Additionally, § 19-3B-201(d), Ala. Code 1975, provides:

"A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, but not being limited to a proceeding to:

"(1) request instructions;

"(2) determine the existence or nonexistence of any immunity, power, privilege, duty or right;

"(3) approve a nonjudicial settlement;

"(4) interpret or construe the terms of the trust;

"(5) determine the validity of a trust or of any of its terms;

"(6) approve a trustee's report or accounting or compel a trustee to report or account;

"(7) direct a trustee to refrain from performing a particular act or grant to a trustee any necessary or desirable power;

"(8) review the actions or approve the proposed actions of a trustee, including the exercise of a discretionary power;

"(9) accept the resignation of a trustee;

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"(10) appoint or remove a trustee;

"(11) determine a trustee's compensation;

"(12) transfer a trust's principal place of administration or a trust's property to another jurisdiction;

"(13) determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;

"(14) modify or terminate a trust;

"(15) combine trusts or divide a trust;

"(16) determine liability of a trust for debts of a beneficiary and living settlor;

"(17) determine liability of a trust for debts, expenses of administration, and statutory allowances chargeable against the estate of a deceased settlor;

"(18) determine the liability of a trust for claims, expenses and taxes in connection with the settlement of a trust that was revocable at the settlor's death; and

"(19) ascertain beneficiaries and determine to whom property will pass upon final or partial termination of a trust."

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Neither § 19-3B-201(c) nor § 19-3B-201(d) confers jurisdiction on a probate court to entertain a shareholder derivative action asserted on behalf of a corporation merely because a trust over which the probate court exercises jurisdiction beneficially holds shares of stock in that corporation. South Haven is a separate legal entity, recognized as distinct from the holders of its shares. See Ex parte 4tdd.com, 306 So. 3d 8 (Ala. 2020). This legal principle entitled the nephews, in their capacities as substitutes for the trustee, to assert derivative claims on behalf of South Haven in the circuit-court action and to recover damages on its behalf. In comparison, the nephews, as beneficiaries of the trust, had a right to assert in the probate-court action their trust claims, which included breach-of-fiduciary claims relating to the administration of the trust, and to seek a judgment based on those alleged breaches. See First Alabama Bank of Montgomery, N.A. v. Martin, 425 So. 2d 415, 423 (Ala. 1982) ("It has long been the law in Alabama that where a trustee does not perform his duty to protect the trust, the beneficiaries may sue in equity to protect their rights.") Thus, although the trust might have had an indirect interest in the shareholder derivative claims asserted in the circuit-court

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action because the trust either was holding or previously held shares of South Haven stock, the shareholder derivative claims are simply unrelated to the administration of the trust. Stated differently, the derivative claims asserted by the nephews belong to South Haven and stand independently of, and have no bearing on, the nephews' claims relating to the administration of the trust. Because only the circuit court had subject-matter jurisdiction over the shareholder derivation claims, the abatement statute was not triggered. See § 12-11-31(1), Ala. Code 1975 (providing that the jurisdiction of the circuit court as to equitable matters extends "[t]o all civil actions in which a plain and adequate remedy is not provided in the other judicial tribunals").

The nephews also contend that the circuit court erred in striking, without explanation, their trust claims, which the probate court held would be appropriate for them to assert in the circuit-court action. For the same reasons we stated for affirming the probate court's judgment, we agree. As indicated, the trust claims asserted by the nephews in the probate-court action arise out of the same core of operative facts that underlie the claims in the circuit-court action. All the beneficiaries,

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including the nephews, have engaged in discovery in the circuit-court action, and they all agreed that the discovery in that action could be used to resolve claims asserted in both the probate-court action and the circuit-court action. Therefore, because the probate court was justified in terminating the trust, the circuit court is the appropriate venue to litigate all the remaining claims, including the nephews' trust claims.

IV. Conclusion

The judgment of the probate court terminating the trust, subject to the nephews' ability to reassert their trust claims in the circuit-court action, is affirmed. The judgment of the circuit court dismissing the nephews' trust claims and derivative claims is reversed, and the cause is remanded for that court to exercise jurisdiction over those claims.

1190700 -- AFFIRMED.

1190917 -- REVERSED AND REMANDED.

Parker, C.J., and Mendheim and Stewart, JJ., concur.

Bryan, J., concurs in the result.

Bolin and Wise, JJ., recuse themselves.