

Rel: 05/25/2007 Jett rehearing

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2006-2007

2050989

Rodgetta Colvin Jett

v.

Lawyers Title Insurance Corporation

Appeal from Jefferson Circuit Court
(CV-01-5190)

On Application for Rehearing

THOMPSON, Presiding Judge.

On application for rehearing, Lawyers Title Insurance Corporation contends that Rodgetta Colvin Jett, by virtue of Mary Craig Bryant's January 9, 1995, will conveying her entire estate to Jett, obtained title to the property at issue in

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this case when Bryant died on March 14, 1995. In making this argument, Lawyers Title relies on Murphree v. Griffis, 215 Ala. 98, 109 So. 746 (1926), in which our supreme court held that title to land obtained by a beneficiary of a will vests at the time of the testator's death. But see Murphy v. Vaughan, 226 Ala. 461, 147 So. 404 (1933) (property vested in the beneficiary at the time the judgment confirming the probate of the will was entered); and Douglass v. Jones, 628 So. 2d 940, 941 (Ala. Civ. App. 1993) ("Beneficiaries under a will have no title until settlement and disbursement of the estate by the executors."). Lawyers Title has impermissibly raised this argument for the first time in its brief on application for rehearing.

"Our supreme court has stated:

"'We cannot sanction the practice of bringing up new questions for the first time in application for rehearing.' Kirkland v. Kirkland, 281 Ala. 42, 49, 198 So. 2d 771, 777 (1967) (on application for rehearing). 'We cannot sanction the practice of bringing up new questions for the first time in applications for rehearing.' Cole v. Cole Tomato Sales, Inc., 293 Ala. 731, 735, 310 So. 2d 210, 212 (1975) (on application for rehearing). 'New supporting arguments presented for the first time on rehearing generally will not be considered.' Stover v. Alabama Farm

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Bureau Ins. Co., 467 So. 2d 251, 253 (Ala. 1985) (on application for rehearing). '[T]his argument was raised for the first time on application for rehearing, and therefore will not be considered.' Schulte v. Smith, 708 So. 2d 138, 141 n. 2 (Ala. 1997) (on application for rehearing)."

"Water Works & Sewer Bd. of Selma v. Randolph, 833 So. 2d 604, 609 (Ala. 2002) (opinion on application for rehearing) (quoting Ex parte Lovejoy, 790 So. 2d 933, 938-39 (Ala. 2000)) (emphasis added)."

Alexander v. State, 904 So. 2d 1265, 1272 (Ala. Civ. App. 2004). Accordingly, based on the foregoing authorities, this court may not now consider the argument Lawyers Title asserts for the first time on application for rehearing.

APPLICATION OVERRULED.

Pittman, Bryan, and Thomas, JJ., concur.

Moore, J., concurs in the result, without writing.