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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170270

Randolph Clay Cooper

v.

Garland Terrance Cooper and Rebecca Cooper Bonner

Appeal from Baldwin Circuit Court
(CV-15-900107)

1170271

Randolph Clay Cooper

v.

Garland Terrance Cooper and Rebecca Cooper Bonner

Appeal from Baldwin Circuit Court
(CV-15-900307)

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MAIN, Justice.

In these consolidated appeals, Randolph Clay Cooper ("Clay") appeals from two summary judgments entered in favor of his siblings, Garland Terrance Cooper ("Terry") and Rebecca Cooper Bonner ("Becky"). Case no. 1170270 concerns a petition for letters of administration for the estate of Carol Evans Cooper ("Mrs. Cooper"), who is the mother of Clay, Terry, and Becky. Case no. 1170271 involves Clay's petition to distribute any assets remaining in a trust created by the will of Nolan P. Cooper ("Mr. Cooper"), who was Mrs. Cooper's husband and is the father of Clay, Terry, and Becky.

I. Facts and Procedural History

Mr. Cooper died in January 2002. Mr. Cooper's will directed that an amount be put into a trust equal to the amount that is free of federal estate tax (that amount was \$1,000,000 in 2002) for the benefit of his wife, Mrs. Cooper. Based on documents attached to the summary-judgment motions in the present cases, it appears that the testamentary trust either was or should have been funded with real property, including a "farm" valued at \$952,000 and other real property valued at \$47,900. Mr. Cooper's other assets passed directly

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to Mrs. Cooper. The will appointed Becky as the trustee of the trust. The trustee was instructed to "distribute the net income and principal" of the trust for the benefit of Mrs. Cooper. The trustee was instructed to distribute the entire net income to Mrs. Cooper, and, concerning the principal, the trustee was to "pay or apply such amount or amounts of principal (even to the extent of all the same) to or for the use of the beneficiary as such trustee may deem necessary, proper or desirable, in the absolute discretion of such trustee, for the medical or dental expenses, drugs, nursing or hospital expenses, other support and maintenance in reasonable comfort, or for any financial burden or emergency of the beneficiary." Upon Mrs. Cooper's death, the trust was to terminate and any assets remaining in the trust were to be divided and distributed equally among Clay, Terry, and Becky.

In September 2008, Mrs. Cooper created a revocable living trust. It appears that the \$952,000 farm was deeded to Mrs. Cooper's trust around the same time that trust was created. Mrs. Cooper was the trustee of her trust, and Becky was the first successor trustee. At Mrs. Cooper's death, the trust estate was to be distributed to Becky and Terry. Clay was not

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included in the distribution. Mrs. Cooper died in April 2012. A copy of what was purported to be Mrs. Cooper's will was attached to the summary-judgment motions. That will placed the entire residue of Mrs. Cooper's estate in her trust.

In 2012, in a lawsuit that is completely separate from the current litigation, Clay sued Becky, "individually and (i) as trustee of Nolan P. Cooper testamentary trust, (ii) trustee of the Carol Evans Cooper revocable living trust, (iii) administratrix of the will and/or estate of Nolan P. Cooper, and (iv) administratrix of the will and/or estate of Carol Evans Cooper"; David Bonner, who is Becky's husband; Terry; and Diane Porter, who is an attorney and accountant. Clay's complaint alleged, among other things, that, at Becky's direction, Mrs. Cooper reopened Mr. Cooper's estate and wrongfully transferred property, including property that should have been in Mr. Cooper's trust, to Mrs. Cooper and/or Mrs. Cooper's trust. The 2012 lawsuit sought, among other things, a full accounting of all assets "held by [Mr. Cooper's] trust or rightfully belonging to [that trust], including those which already have been dissipated, transferred, or sold." Also, the lawsuit sought a judgment

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"requiring that one-third of the assets which should have funded [Mr. Cooper's trust], but which were instead diverted to the Carol Cooper Revocable Trust(s), and thereafter to Becky and [Becky's husband], be distributed to [Clay] (and likewise to Terry)." Further, the lawsuit sought a judgment "ordering the partition and sale, or alternatively the equitable distribution of [Mr. Cooper's trust] assets, in accordance with the Nolan Cooper will and [Mr. Cooper's trust]." In November 2013, the circuit court entered a summary judgment in favor of the defendants without stating its reasons for doing so. That summary judgment was unanimously affirmed, without an opinion, by the Court of Civil Appeals, Cooper v. Bonner (No. 2130323, Sept. 12, 2014), 190 So. 3d 60 (Ala. Civ. App. 2014) (table), and the certificate of judgment was issued on October 1, 2014.

The petition for letters of administration for Mrs. Cooper's estate was filed in the Baldwin Probate Court on October 2, 2014, by Harry D'Olive, Jr., who is an attorney.¹ The probate court granted the letters of administration to D'Olive on October 21, 2014. In November 2014, Becky and

¹D'Olive is not related to Mrs. Cooper.

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Terry moved the probate court to set aside its order granting the letters of administration. An inventory of the estate filed by D'Olive in January 2015 stated that Mrs. Cooper's estate did not include any real property or personal property.

In January 2015, Clay petitioned the circuit court to remove the administration of the estate to the circuit court, and the circuit court did so.

In March 2015, a petition to distribute any remaining trust assets in Mr. Cooper's trust was filed in the circuit court. The petition sought termination of the testamentary trust pursuant to the terms of Mr. Cooper's will and distribution of the corpus of the testamentary trust, "including the appreciated value of any assets which this court determines should have been included as assets of the testamentary trust," to Clay, Terry, and Becky, the beneficiaries of the trust. The petition also sought a complete accounting of the trust since the day it was funded.

In April 2015, Becky and Terry moved the circuit court to consolidate the administration of Mrs. Cooper's estate and the petition to distribute any assets remaining in Mr. Cooper's trust, and they moved the court to transfer both cases to

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Judge J.W. Bishop, the circuit judge who had presided over the 2012 litigation. Also, Becky and Terry filed a "motion to dismiss cases and/or motion for summary judgment" in both cases. In that motion, Becky and Terry argued that "Clay should be estopped from pursuing his most recent frivolous two lawsuits where the issues have been previously decided in earlier litigation between the same parties involving the same two decedents' estates."

In June 2015, in the case concerning the administration of Mrs. Cooper's estate, Judge Joseph Norton denied the motion to consolidate and the motion to dismiss the case. Also, in the same month, in the case concerning the distribution of the assets of Mr. Cooper's testamentary trust, Judge Langford Floyd ruled that the motion to consolidate was moot and that the "motion to dismiss, or in the alternative summary judgment filed by [Terry] and [Becky] is hereby moot, pending distribution."

On March 1, 2016, in both cases, Becky and Terry moved the circuit court to order mediation. On March 3, 2016, in the case concerning the distribution of the assets of Mr. Cooper's testamentary trust, Judge Floyd referred the case to

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mediation. On March 8, 2016, Judge Norton referred the estate-administration case to mediation. On April 26, 2016, Judge Floyd issued an order stating that the parties do not wish to mediate, and he withdrew his earlier mediation order. On May 18, 2016, Judge Norton modified his mediation order and stated that "any in-court proceedings as to the dispute in mediation shall be stayed as to the parties in mediation for a period of 60 days from the date of this order."

On July 25, 2016, in the case concerning the distribution of the testamentary-trust assets, Clay, acting pro se, filed a "motion for summary judgment and/or declaratory judgment." In that motion, Clay argued that (1) "as a matter of law the legitimate corpus of the Nolan P. Cooper testamentary trust is due to be distributed and the trust terminated," (2) that "as a matter of law the trustee has a duty of loyalty to the trust, and to protect trust assets, declaratory judgment is appropriate where the trustee has not fulfilled this duty," (3) that "removal of testamentary trustee is appropriate to protect trust assets, to account for trust assets, to equitably distribute trust assets, and to terminate the

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testamentary trust," and (4) that he is entitled to attorney fees.

On September 9, 2016, Judge Floyd denied Clay's summary-judgment motion. On that same day, Judge Floyd transferred the case concerning the distribution of the testamentary-trust assets to Judge Norton.

On June 22, 2017, Clay, acting pro se, filed a petition for a writ of mandamus in this Court (No. 1160843). Clay sought to compel Judge Norton (1) to vacate certain orders granting objections to Clay's request to issue nonparty subpoenas and (2) to allow the subpoenas to issue. This Court unanimously denied the mandamus petition on July 26, 2017.

In August 2017, Becky and Terry filed another motion for a summary judgment in both cases. Also, in both cases, Becky and Terry moved the circuit court to award attorney fees and expenses under the Alabama Litigation Accountability Act. In the summary-judgment motions, they argued that "the removal proceedings and the 2015 lawsuit [involving the testamentary-trust assets] are barred by the doctrine of claim preclusion" and that they "are entitled to an award of their attorneys'

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fees and litigation costs under the Alabama Litigation Accountability Act."

On September 21, 2017, Judge Norton entered an order stating that the motion for an award of attorney fees and expenses filed by Becky and Terry was "moot." Also, on the same day, Judge Norton granted the summary-judgment motions filed by Becky and Terry in both cases. Judge Norton did not provide any reasons for his decision. On October 20, 2017, Clay moved the circuit court to alter, amend, or vacate the summary judgments. That motion was denied on November 15, 2017. Clay filed his notice of appeal in each case on December 27, 2017.

II. Standard of Review

"In Bruce v. Cole, 854 So. 2d 47, 54 (Ala. 2003), this Court stated:

"Summary judgment is appropriate only when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56(c)(3), Ala. R. Civ. P., and Dobbs v. Shelby County Econ. & Indus. Dev. Auth., 749 So. 2d 425 (Ala. 1999). The court must accept the tendencies of the evidence most favorable to the nonmoving party and must resolve all reasonable doubts in favor of the nonmoving party. System Dynamics Int'l, Inc. v. Boykin, 683 So. 2d 419 (Ala. 1996). "[W]here the evidence is in conflict, the

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issue must [be tried to the fact-finder]." Kitchens v. Winn-Dixie Montgomery, Inc., 456 So. 2d 45, 47 (Ala. 1984). In reviewing a summary judgment, an appellate court, de novo, applies the same standard as the trial court. Dobbs, supra.'

"(Some emphasis added.)"

Blackmon v. Brazil, 895 So. 2d 900, 904 (Ala. 2004).

III. Discussion

On appeal, Clay argues that, in each case, the circuit court erred by entering a summary judgment in favor of Becky and Terry based on their argument that Clay's claims in both cases are barred by the doctrine of res judicata as a result of the 2012 litigation. In the case concerning the distribution of any assets remaining in Mr. Cooper's testamentary trust, Clay argues that the requirements for res judicata are not met because, he says, the same cause of action was not presented in the 2012 litigation. In the case concerning the administration of Mrs. Cooper's estate, Clay argues that the requirements for res judicata are not met because, he says, neither the same parties nor the same cause of action was present in the 2012 litigation.

This Court has stated:

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"Res judicata and collateral estoppel are two closely related, judicially created doctrines that preclude the relitigation of matters that have been previously adjudicated or, in the case of res judicata, that could have been adjudicated in a prior action.

"The doctrine of res judicata, while actually embodying two basic concepts, usually refers to what commentators label 'claim preclusion,' while collateral estoppel ... refers to 'issue preclusion,' which is a subset of the broader res judicata doctrine."

Lee L. Saad Constr. Co. v. DPF Architects, P.C., 851 So. 2d 507, 516 (Ala. 2002) (quoting Little v. Pizza Wagon, Inc., 432 So. 2d 1269, 1272 (Ala. 1983) (Jones, J., concurring specially)). Two causes of action are the same for res judicata purposes when the following four elements are satisfied: '(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions.' Equity Res. Mgmt., Inc. v. Vinson, 723 So. 2d 634, 636 (Ala. 1998). 'If those four elements are present, then any claim that was, or that could have been, adjudicated in the prior action is barred from further litigation.' Id. (citing Dairyland Ins. Co. v. Jackson, 566 So. 2d 723, 725-26 (Ala. 1990))."

Chapman Nursing Home, Inc. v. McDonald, 985 So. 2d 914, 919

(Ala. 2007).

A.

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Concerning whether Clay's petition to distribute any assets remaining in Mr. Cooper's testamentary trust is barred by the doctrine of res judicata, it is undisputed that the 2012 litigation resulted in a judgment on the merits, rendered by a court of competent jurisdiction, and that the parties were substantially identical to the parties in the present case. However, Clay argues that the same cause of action was not presented in both actions. We disagree.

Regarding the same-cause-of-action element of res judicata,

"this Court has noted that "'the principal test for comparing causes of action [for the application of res judicata] is whether the primary right and duty or wrong are the same in each action.'" Old Republic Ins. Co. v. Lanier, 790 So. 2d 922, 928 (Ala. 2000) (quoting Wesch v. Folsom, 6 F.3d 1465, 1471 (11th Cir. 1993)). This Court further stated: "'Res judicata applies not only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts.'" 790 So. 2d at 928 (quoting Wesch, 6 F.3d at 1471). As a result, two causes of action are the same for res judicata purposes "'when the same evidence is applicable in both actions.'" Old Republic Ins. Co., 790 So. 2d at 928 (quoting Hughes v. Martin, 533 So. 2d 188, 191 (Ala. 1988)).

"In Broughton v. Merchants National Bank, 476 So. 2d 97 (Ala. 1985), this Court held that the same-cause-of-action requirement was satisfied under circumstances similar to those here. In that case,

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Elliott Broughton, an heir of the decedent, challenged the settlement of the decedent's estate because, he alleged, Merchants Bank, the administrator and executor of the estate, had mismanaged the assets of a living trust, thereby depriving Broughton of a portion of his testamentary disposition. The probate court disagreed and found that Merchants had properly administered Mrs. Broughton's estate. 476 So. 2d at 99. Instead of appealing the decision of the probate court, Broughton filed a new complaint in the Mobile Circuit Court alleging negligence, willful and wanton neglect, reckless mismanagement of the trust, fraud, and conspiracy to defraud. Broughton contended that the doctrine of res judicata did not apply because he had not raised the tort claims in the contest challenging Merchants Bank's handling of the estate. 476 So. 2d at 99-100. The trial court held that Broughton's claims were barred by the doctrine of res judicata, and this Court affirmed that decision, stating that 'the allegations asserted by Broughton in the probate court and the claims he now asserts in this case arose from the same nucleus of circumstances, those being Merchants' handling of the trust and the estate, as well as the alleged conflict of interest or fraud resulting therefrom.' 476 So. 2d at 102. This Court also concluded that the two actions were the same for res judicata purposes because 'Broughton ha[d] not presented in this action any new or different evidence from that which he presented in the probate court.' 476 So. 2d at 102."

Chapman Nursing Home, 985 So. 2d at 921-22.

In the present case, as stated earlier, the 2012 lawsuit sought, among other things, a full accounting of all assets "held by [Mr. Cooper's] trust or rightfully belonging to [that trust], including those which already have been dissipated,

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transferred, or sold." Also, the 2012 lawsuit sought a judgment "requiring that one-third of the assets which should have funded [Mr. Cooper's trust], but which were instead diverted to the Carol Cooper Revocable Trust(s), and thereafter to Becky and [Becky's husband], be distributed to [Clay] (and likewise to Terry)." Further, the lawsuit sought a judgment "ordering the partition and sale, or alternatively the equitable distribution of [Mr. Cooper's trust] assets, in accordance with the Nolan Cooper will and [Mr. Cooper's trust]." The petition in the present case sought termination of the testamentary trust pursuant to the terms of Mr. Cooper's will and distribution of the corpus of the testamentary trust, "including the appreciated value of any assets which this court determines should have been included as assets of the testamentary trust," to Clay, Terry, and Becky, the beneficiaries of the trust. The petition also sought a complete accounting of the trust since the day it was funded. The basis for the relief requested in the 2012 litigation and the basis for the relief requested in Clay's petition to distribute any assets remaining in Mr. Cooper's testamentary trust both arise out of the same nucleus of

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operative facts, and substantially the same evidence is applicable in both actions. Therefore, the two causes of action are the same for res judicata purposes, and we affirm the trial court's judgment in case no. 1170271.

B.

Concerning whether the administration of Mrs. Cooper's estate is also barred by the doctrine of res judicata, Clay argues that neither the same parties nor the same cause of action was present in the 2012 litigation. We agree that the parties in the two cases are not the same or substantially identical.

""[T]he party identity criterion of res judicata does not require complete identity, but only that the party against whom res judicata is asserted was either a party or in privity with a party to the prior action[.]"" Dairyland Ins. Co. v. Jackson, 566 So. 2d [723] at 725 [(Ala. 1990)] (quoting Whisman v. Alabama Power Co., 512 So. 2d 78, 82 (Ala. 1987)). Our caselaw requires that 'there is a substantial identity of parties in the two actions.' Ex parte Ford Motor Credit Co., 772 So. 2d 437, 440 (Ala. 2000). Substantial identity requires that the "parties be identical, sometimes referred to as the mutuality of estoppel requirement."" Stewart v. Brinley, 902 So. 2d 1, 10 (Ala. 2004) (quoting McMillian v. Johnson, 878 F. Supp. 1473, 1520 (M.D. Ala. 1995))."

Chapman Nursing Home, 985 So. 2d at 921.

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In the present case, the probate court granted the letters of administration to D'Olive on October 21, 2014. It is true that, in the 2012 litigation, Clay attempted to sue Becky in her capacity as "administratrix of the will and/or estate of Carol Evans Cooper," among other capacities. However, that attempt was ineffective because no administration of Mrs. Cooper's estate had yet been commenced and no estate administrator was appointed until after the 2012 litigation had concluded on October 1, 2014. Thus, unlike the present case, no administrator of Mrs. Cooper's estate was involved in the 2012 litigation. Therefore, the parties in the two cases are not the same or substantially identical, and the circuit court erred by entering a summary judgment in favor of Becky and Terry based on their argument that the administration of Mrs. Cooper's estate is barred by the doctrine of res judicata.

IV. Conclusion

Based on the foregoing, we affirm the circuit court's judgment in case no. 1170271, and, in case no. 1170270, we reverse the circuit court's judgment and remand the case for proceedings consistent with this opinion.

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1170270 -- REVERSED AND REMANDED.

1170271 -- AFFIRMED.

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

Bryan, J., concurs in the result.