Rel: March 15, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170450

Steven Christopher Jones

v.

Tammy Brewster and Jeffrey Eugene Brewster

Appeal from Colbert Circuit Court
(CV-16-39)

STEWART, Justice.

Steven Christopher Jones ("Chris Jones") appeals from a judgment of the Colbert Circuit Court ("the circuit court") in favor of Tammy Brewster and Jeffrey Eugene Brewster in a will contest filed by Chris Jones concerning the will of his

father, Mike Jones. Because the circuit court's judgment is void for lack of subject-matter jurisdiction, we dismiss the appeal.

Facts and Procedural History

Mike Jones died on August 23, 2015. On August 7, 2015, 16 days before his death, Mike Jones executed a will devising all of his property, except $100, to the Brewsters, who were Mike Jones's neighbors. The will provided that Chris Jones would receive $100 "and absolutely nothing more of any kind or nature." Mike Jones also appointed Tammy Brewster as the executrix of his estate. On August 28, 2015, the Colbert Probate Court ("the probate court") appointed an administrator ad colligendum "to collect, protect, and preserve the goods and chattels of the deceased['s] estate and ascertain the indebtedness of the deceased." On September 2, 2015, Tammy Brewster filed in the probate court a petition seeking an order granting her letters testamentary as the executrix of Mike Jones's estate; on September 4, 2015, Chris Jones filed a petition requesting that the probate court grant him letters of administration.

On October 23, 2015, Chris Jones filed a will contest in the probate court alleging that the Brewsters had coerced and had exerted undue influence on Mike Jones to procure the August 7, 2015, will. Contemporaneously with the complaint, Chris Jones filed in the probate court a motion to transfer the will-contest proceedings to the circuit court pursuant to § 43-8-198, Ala. Code 1975. The probate court set the matter for a hearing on November 16, 2015. On September 21, 2016, the probate court certified the probate-court record. According to the case-action summary in the circuit court, the proceedings were docketed in the circuit court on September 21, 2016. The record, however, does not include an order of the probate court transferring the will contest to the circuit court. The probate court also did not rule on Tammy Brewster's request for letters testamentary or on Chris Jones's request for letters of administration.

The circuit court held a three-day trial on the will contest, which concluded on November 29, 2017. On January 2, 2018, the circuit court entered a judgment in favor of the Brewsters, finding that Mike Jones had intended to disinherit Chris Jones and concluding that the evidence did not establish

that the Brewsters influenced Mike Jones or exercised control over him in a manner sufficient to invalidate his will. The circuit court remanded the cause to the probate court for the purpose of distributing Mike Jones's assets pursuant to the will. Chris Jones filed a timely notice of appeal from the circuit court's judgment to this Court.[1]

---

[1]On July 26, 2018, the clerk of this Court entered an order stating, in pertinent part:

> "It appearing that no order of removal is contained in the record on appeal, which would make any order of the circuit court void and unappealable, see § 12-11-41, Ala. Code 1975, and DuBose v. Weaver, 68 So. 3d 814, 822 (Ala. 2011) (filing of removal petition in circuit court and entry of removal order by that court are required for circuit court's acquisition of jurisdiction), and
>
> "Because the party seeking jurisdiction of this Court must establish a basis for that jurisdiction, see Crutcher v. Williams, 12 So. 3d 631, 636 (Ala. 2008) (absent subject-matter jurisdiction, Supreme Court cannot consider appeal), therefore,
>
> "IT IS ORDERED that the Appellant SHOW CAUSE in writing to this Court, within seven (7) days from the date of this order with appropriate citations to legal authority, why the order appealed from is a final and appealable order and why this appeal should not be dismissed."

(Capitalization in original.) In response to this order, Chris Jones stated that he did not seek removal of the administration of Mike Jones's estate from the probate court to the circuit court; rather, he sought a transfer of the will contest to the circuit court pursuant to § 43-8-198, Ala. Code 1975.

Discussion

Before addressing the merits of Chris Jones's appeal, this Court must determine whether the circuit court had subject-matter jurisdiction over the will contest.

> "'Although neither party raises a question before this Court regarding the circuit court's subject-matter jurisdiction to consider the appellants' will contest, the absence of subject-matter jurisdiction cannot be waived, and it is the duty of an appellate court to notice the absence of subject-matter jurisdiction ex mero motu. See MPQ, Inc. v. Birmingham Realty Co., 78 So. 3d 391, 393 (Ala. 2011). If the circuit court's jurisdiction to consider the will contest was never properly invoked, then the judgment entered on [February 13, 2018], is void and [will] not support an appeal. MPQ, 78 So. 3d at 394 ("'A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.'" (quoting Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008))).'
>
> "McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017).
>
> > "'"In Alabama, a will may be contested in two ways: (1) under § 43-8-190, Ala. Code 1975, before probate, the contest may be instituted in the probate court or (2) under § 43-8-199, Ala. Code 1975, after probate and within six months thereof, a contest may be instituted by

> filing a complaint in the circuit court of the county in which the will was probated."
>
> "'Stevens v. Gary, 565 So. 2d 73, 74 (Ala. 1990).'
>
> "Bond v. Pylant, 3 So. 3d 852, 854 (Ala. 2008)."

Burns v. Ashley, [Ms. 1170565, Sept. 28, 2018] ___ So. 3d ___, ___ (Ala. 2018).

Under Alabama law, a circuit court, under specified conditions delineated in the pertinent statute, can obtain subject-matter jurisdiction over a will contest or the administration of an estate. The probate court has general and original jurisdiction over matters involving the administration of estates and the probating of wills. See Ala. Const. 1901, § 144; and § 12-13-1, Ala. Code 1975. Pursuant to § 43-8-190, Ala. Code 1975, the probate court has jurisdiction over will contests where a will has not been admitted to probate. Section 43-8-190, Ala. Code 1975, states, in pertinent part:

> "A will, before the probate thereof, may be contested by any person interested therein, or by any person, who, if the testator had died intestate, would have been an heir or distributee of his estate, by filing in the court where it is offered for probate allegations in writing that the will was not duly executed, or of the unsoundness of mind of

> the testator, or of any other valid objections thereto ...."

A party, however, has the statutory right to seek a transfer of a will contest from the probate court to the circuit court pursuant to § 43-8-198, Ala. Code 1975, which reads:

> "Upon the demand of any party to the contest, made in writing at the time of filing the initial pleading, the probate court, or the judge thereof, must enter an order transferring the contest to the circuit court of the county in which the contest is made, and must certify all papers and documents pertaining to the contest to the clerk of the circuit court, and the case shall be docketed by the clerk of the circuit court and a special session of said court may be called for the trial of said contest or, said contest may be tried by said circuit court at any special or regular session of said court. The issues must be made up in the circuit court as if the trial were to be had in the probate court, and the trial had in all other respects as trials in other civil cases in the circuit court. ..."

To comply with the statute, the following prerequisites must be met: (1) the will must not be admitted to probate, although it must be offered for probate before it can be contested, see Hooper v. Huey, 293 Ala. 63, 67, 300 So. 2d 100, 104 (1974), disapproved of on other grounds, Bardin v. Jones, 371 So. 2d 23 (Ala. 1979); (2) the party seeking the transfer must file a written demand for the transfer in the probate court; (3)

the transfer demand must be filed at the time of the filing of the will-contest complaint or other initial pleading; (4) the probate court must enter a written order transferring the will contest to the circuit court; (5) the probate court must certify the probate-court record pertaining to the will contest to the circuit-court clerk; (6) the circuit-court clerk shall docket the case in the circuit court; and (7) the circuit court must set the will contest for a trial at a regular or a special session of court.

After a will has been admitted to probate in the probate court, jurisdiction in the circuit court cannot be invoked pursuant to a transfer under § 43-8-198. Within six months following the admission of the will to probate, however, a person with an interest in the will may file a will contest directly in the circuit court pursuant to § 43-8-199, Ala. Code 1975, which provides:

> "Any person interested in any will who has not contested the same under the provisions of this article, may, at any time within the six months after the admission of such will to probate in this state, contest the validity of the same by filing a complaint in the circuit court in the county in which such will was probated."

Under § 43-8-199, only two perquisites exist: (1) the will must have been admitted to probate no more than six months

earlier; and (2) the complaint must be filed directly in the circuit court.[2]

Lastly, the administration of an estate in the probate court can be removed to the circuit court pursuant to § 12-11-41, Ala. Code 1975. Section § 12-11-41 reads:

> "The administration of any estate may be removed from the probate court to the circuit court at any time before a final settlement thereof, by any heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, without assigning any special equity; and an order of removal must be made by the court, upon the filing of a sworn petition by any such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, reciting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court."

To invoke the circuit court's jurisdiction over the administration of an estate through removal, "the filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that

---

[2]See, however, Daniel v. Moye, 224 So. 3d 115, 131 n. 9 (Ala. 2016) (noting that "there are currently four counties in Alabama--Mobile, Jefferson, Shelby, and Pickens--in which the probate courts have been vested with concurrent equitable estate jurisdiction with the circuit court to try will contests after a will has been admitted to probate").

court's acquisition of jurisdiction over the administration of the estate pursuant to § 12-11-41." DuBose v. Weaver, 68 So. 3d 814, 822 (Ala. 2011)(emphasis omitted).

In a will contest, the subject-matter jurisdiction of both the probate court and the circuit court is statutory and limited. Kaller v. Rigdon, 480 So. 2d 536, 539 (Ala. 1985). In a long line of cases, this Court has held that strict compliance with the statutory language pertaining to a will contest is required to invoke the jurisdiction of the appropriate court. Boshell v. Lay, 596 So. 2d 581, 583 (Ala. 1992)("In order to contest a will under either of these methods, the contestant must strictly comply with the statutory language in order to quicken jurisdiction of the appropriate court."); Marshall v. Vreeland, 571 So. 2d 1037, 1038 (Ala. 1990)("The requirements of § 43-8-198 must be complied with exactly, because will contest jurisdiction is statutorily conferred upon the circuit court."); Bullen v. Brown, 535 So. 2d 76, 78 (Ala. 1988)("It is clear that will contest jurisdiction, being statutorily conferred, must comply with the statutory language strictly in order to quicken jurisdiction of the appropriate court."); Kaller v. Rigdon, 480 So. 2d at 538 ("Because will contest jurisdiction is

statutorily conferred, the procedural requirements of the applicable statute must be complied with exactly."); Forrester v. Putman, 409 So. 2d 773, 775 (Ala. 1981)("There was neither a transfer of a contest to the circuit court according to Code 1975, § 43-1-78[, now § 43-8-198], nor a circuit court contest of a will admitted to probate according to Code 1975, § 43-1-79[, now § 43-8-199]. A circuit court's jurisdiction over a will contest is statutory and limited."); Ex parte Stephens, 259 Ala. 361, 363, 66 So. 2d 901, 903 (1953)(concluding that the words "must transfer the [will] contest" "have been regarded as mandatory"); and Ex parte Pearson, 241 Ala. 467, 469, 3 So. 2d 5, 6 (1941)("It is familiar law in Alabama, the only way to quicken into exercise a statutory and limited jurisdiction is by pursuing the mode prescribed by the statute.").

Most recently, in Burns, supra, a case factually and procedurally similar to the instant case, the appellants initiated a will contest in the probate court, alleging that the appellee "used undue influence to procure [Rheba Sue Ashley's, the decedent's,] execution of the 2014 will." Burns, ___ So. 3d at ____. The probate court in Burns did not admit the will to probate or appoint a personal representative of

the decedent's estate. The appellants filed a motion to transfer the will contest to the circuit court pursuant to § 43-8-198, Ala. Code 1975, but the probate court did not enter an order transferring the will contest to the circuit court. Burns, ___ So. 3d at ____.[3] On appeal, this Court determined that the circuit court lacked subject-matter jurisdiction because the probate court did not enter an order transferring the case to the circuit court in strict compliance with § 43-8-198. This Court held:

> "In this case, the probate court never admitted Rheba's will to probate. Thus, pursuant to § 43-8-190, Ala. Code 1975, the appellants properly filed their will contest in the probate court. Bond [v. Pylant, 3 So. 3d 852, 854 (Ala. 2008)]. As noted, the appellants, simultaneously with the filing of their will contest, sought to transfer the will contest to the circuit court. The transfer to

[3]The appellants in Burns also sought removal of the administration of the estate from the probate court pursuant to § 12-11-41, Ala. Code 1975, which the circuit court granted. This Court held that removal was not proper because a circuit court cannot assume jurisdiction over the administration of an estate when the administration has not yet begun. Burns, ___So. 3d at ____ (citing Ex parte Smith, 619 So. 2d 1374, 1375-76 (Ala. 1993)). This Court concluded that the probate court had not yet initiated the general administration of the decedent's estate. Accordingly, this Court concluded that the circuit court's order purporting to remove the administration of the decedent's estate from the probate court and the circuit court's judgment admitting the will to probate and issuing letters testamentary were void for lack of jurisdiction.

circuit court of a will contest pending in probate court is governed by § 43-8-198, which provides, in pertinent part:

> "'Upon the demand of any party to the contest, made in writing at the time of filing the initial pleading, the probate court, or the judge thereof, must enter an order transferring the contest to the circuit court of the county in which the contest is made, and must certify all papers and documents pertaining to the contest to the clerk of the circuit court ....'

"(Emphasis added.)

> "'The jurisdiction conferred on the circuit court by this section of the Code is a statutory and limited jurisdiction. Ex parte Pearson, 241 Ala. 467, 3 So. 2d 5 (1941). Because will contest jurisdiction is statutorily conferred, the procedural requirements of the applicable statute must be complied with exactly.'

"Kaller v. Rigdon, 480 So. 2d 536, 538 (Ala. 1985) (emphasis added). See also Bullen v. Brown, 535 So. 2d 76, 78 (Ala. 1988) ('It is clear that will contest jurisdiction, being statutorily conferred, must comply with the statutory language strictly in order to quicken jurisdiction of the appropriate court.' (emphasis added)); and Marshall v. Vreeland, 571 So. 2d 1037, 1038 (Ala. 1990) (holding that compliance with § 43-8-198 is what gives a circuit court subject-matter jurisdiction over a will contest pending in the probate court).

"Thus, a circuit court cannot assume jurisdiction over a will contest pending in probate court absent strict compliance with the procedural requirements of § 43-8-198. One of the procedural requirements of § 43-8-198 necessary to invoke a

> circuit court's jurisdiction over a will contest pending in probate court is that the probate court in which the will contest is pending must enter an order transferring the will contest to the circuit court; a circuit court cannot 'reach down' and remove a will contest from probate court. See DuBose v. Weaver, 68 So. 3d 814, 817 n. 3 (Ala. 2011) (recognizing the distinction between the authority of a probate court to transfer a pending will contest and the authority of a circuit court to remove the administration of a decedent's estate). Here, the probate court did not enter an order transferring the appellants' will contest to the circuit court, although it had an imperative duty to do so. See Ex parte McLendon, 824 So. 2d 700, 705 (Ala. 2001). Thus, the procedural requirements of § 43-8-198 were not satisfied, and, as a result, the circuit court never obtained jurisdiction over the will contest. Kaller, supra; Bullen, supra; Marshall, supra. Accordingly, the circuit court's February 13, 2018, judgment, insofar as it denied the appellants' will contest, is void and will not support the appellants' appeal. McElroy[v. McElroy, 254 So. 3d 872 (Ala. 2017)]."

Burns, ___ So. 3d at ____.

In the present case, Chris Jones properly filed his will contest in the probate court because the probate court had not admitted the will to probate and had not appointed a personal representative of Mike Jones's estate. Contemporaneously with the will-contest complaint, Chris Jones filed a motion to transfer the will contest to the circuit court. Thus, Chris Jones sought to invoke the circuit court's jurisdiction pursuant to § 43-8-198. The probate court certified the

probate-court record to the circuit court, the circuit-court clerk docketed the case, and the circuit court held a trial. The record, however, is devoid of a transfer order from the probate court. The entry of a written order by the probate court transferring a will contest to the circuit court is an essential procedural requirement under § 43-8-198 in order for the circuit court to obtain subject-matter jurisdiction, and the probate court had an imperative duty to enter such an order. Burns, ___ So. 3d at ____ (citing Ex parte McLendon, 824 So. 2d 700, 705 (Ala. 2001)). Because the probate court did not enter a transfer order in this case, "the procedural requirements of § 43-8-198 were not satisfied, and, as a result, the circuit court never obtained jurisdiction over the will contest." Burns, ___ So. 3d at ____. Therefore, the judgment of the circuit court is void and will not support Chris Jones's appeal. Accordingly, we dismiss the appeal.

APPEAL DISMISSED.

Parker, C.J., and Shaw, Wise, and Mitchell, JJ., concur.

Bolin and Stewart, JJ., concur specially.

Bryan and Mendheim, JJ., concur in the result.

Sellers, J., dissents.

BOLIN, Justice (concurring specially).

I agree completely with the main opinion. I write specifically to emphasize the jurisdictional tenets upon which it stands.

In the common law of England there was no probate court. Bequests and legacies were handled by the ecclesiastical court and devises by the law court. Gilbreath v. Wallace, 292 Ala. 267, 270, 292 So. 2d 651, 654 (1974).

> "Probate Courts are courts of limited jurisdiction. They have only that jurisdiction which is expressly given by statute. Neither the Probate Judge nor the Probate Court can have any greater authority than that conferred by statute. American Surety Company of New York v. King, 237 Ala. 510, 187 So. 458 [(1939)]; Broadfoot v. City of Florence, 253 Ala. 455, 45 So. 2d 311 [(1950)]. Stated differently, 'probate courts are courts of limited or special jurisdiction and, being inferior courts, cannot take jurisdiction or administer remedies except as provided by statute.' — 14 Am.Jur., Courts, 252."

Longshore v. City of Homewood, 277 Ala. 444, 446, 171 So. 2d 453, 455 (1965). Probate statutes were unknown to the common law and must be strictly construed.

> "In Alabama '[s]tatutes in derogation or modification of the common law are strictly construed. Cook v. Meyer, 73 Ala. 580 (1883). Such statutes are presumed not to alter the common law in any way not expressly declared. Pappas v. City of

> Eufaula, 282 Ala. 242, 210 So. 2d 802 (1968).' Arnold v. State 353 So. 2d 524, 526 (Ala. 1977)."

Baldwin v. Branch, 888 So. 2d 482, 484–85 (Ala. 2004).

Probate courts have original and general jurisdiction over the probate of wills and over the "[t]he granting of letters testamentary and of administration." § 12–13–1(b)(2), Ala. Code 1975. See also § 43-8-160, Ala. Code 1975 ("Upon the death of a testator, a [person entitled to offer a will for probate] may have the will proved before the proper probate court."); § 43-8-162, Ala. Code 1975 ("Wills must be proved in the several probate courts as follows ...."); and § 43-8-1(3), Ala. Code 1975 (defining "court" as "[t]he court having jurisdiction in matters relating to the affairs of decedents. This court in Alabama is known as the probate court."). The main opinion correctly states that, under Alabama law, a circuit court, under specified and explicit conditions delineated in the pertinent statute, can obtain subject-matter jurisdiction over the contest of a will not yet admitted to probate. With regard to the contest of a will offered, but not yet admitted, for probate, § 43-8-190, Ala. Code 1975, allows for a contest to be filed in the probate

court prior to the probate of the will.[4] Section 43-8-198, Ala. Code 1975, goes further to provide for a transfer of a will contest from the probate court, which has original jurisdiction of the proceedings, to the circuit court. Specifically, to accomplish the transfer, upon the motion or demand of any party to a will contest, made in writing at the time of filing the initial pleading of the movant, the probate court must (1) enter an order transferring the contest to the circuit court of the county in which the contest is made and (2) certify all papers and documents pertaining to the contest to the clerk of the circuit court. That statute, which must be strictly construed, requires first that an order be entered transferring a limited portion of the probate proceedings to the circuit court for adjudication of the issues related to the will contest. There is no room here for a flexible analysis, or "substantial compliance" with the statute, so as to accomplish and allow the transfer without all the requirements of the statute being met.

[4]Probate is the "'act or process of proving a will.' Black's Law Dictionary 1365-66 (4th rev. ed. 1968)." Russell v. Maxwell, 387 So. 2d 156, 158 (Ala. 1980).

Although not before the Court in this appeal, and only for the point of contrast, I note that for the contest of wills already admitted to probate, § 43-8-199, Ala. Code 1975, allows a will contest to be brought in circuit court within six months after a will has been admitted to probate.[5] No

[5]In Knox v. Paull, 95 Ala. 505, 11 So. 156 (1891), this Court, interpreting the predecessor of § 43-8-199, stated that that statute "provides ... a special mode of avoiding the effect of the judgment of the Probate Court admitting the instrument to probate" and that "it was the intention of the statute to afford the further opportunity of contesting the will in the Chancery Court ..., to any person interested in the will, who either did not have, or did not avail himself of the opportunity to contest it in the Probate Court." 95 Ala. at 508, 509, 11 So. at 157, 158. The Court added:

> "Good reasons may be suggested for affording this additional opportunity to contest the validity of a will which has been regularly admitted to probate after due notice to all parties in interest. The application to prove the will usually follows close upon the death of the testator. The application comes on for hearing as soon as the short prescribed terms of notice have expired. It must frequently happen that persons interested in the proceeding are wholly unable, while it is pending, to inform themselves as to the instrument offered for probate, or of the circumstances attending its execution. Facts affecting its validity may be developed afterwards, and the failure to discover them, or to obtain the evidence to prove them, may have been without the fault or any lack of diligence on the part of those interested in making a contest. In view of such contingencies, there is manifest propriety and justice in allowing a reasonable time after a formal and regular probate, for a contest of the validity

right to contest a will existed at common law. These separate rights for will contests are purely statutory and can be exercised only in strict compliance with the provisions of the statutes.

In the instant case, Steven Christopher Jones properly filed his will contest in the probate court because the will had not yet been admitted to probate. Contemporaneously with the filing of his will contest in the probate court, Jones filed a demand to transfer the will contest to the circuit court. Thus, Jones sought to invoke the circuit court's jurisdiction so that it could hear the contest pursuant to § 43-8-198. A probate court, confronted with a proper and timely transfer demand accompanying a will contest, can do

---

> of the will by one who did not make a contest in the Probate Court. We have no doubt that this was the intention of the statute."

95 Ala. at 509-10, 11 So. at 158.

This is the general manner in which jurisdiction of the circuit court is quickened in will contests that are commenced after a will is admitted to probate. But see Coleman v. Richardson, 421 So. 2d 113 (Ala. 1982)(explaining that those counties where a local act has conferred general equity jurisdiction on certain probate courts have concurrent jurisdiction with the circuit court to entertain a will contest).

nothing but comply with the mandate of the legislature and transfer the contest to the appropriate circuit court. See Summerhill v. Craft, 425 So. 2d 1055, 1056 (Ala. 1982)(construing Ala. Code 1975, § 43-1-78, which was repealed and replaced by § 43-8-198). Put another way, the probate court cannot refuse a proper demand, but it must affirmatively enter the order to accomplish the transfer. When done in this manner, § 43-8-198 goes on to say that

> "[t]he issues must be made up in the circuit court as if the trial were to be had in the probate court, and the trial had in all other respects as trials in other civil cases in the circuit court. ... After a final determination of the contest, the clerk of the circuit court shall certify the transcript of all judgments of the circuit court in such proceedings, together with all of the papers and documents theretofore certified to the circuit court by the probate court, back to the probate court from which they were first certified to the circuit court, and thereafter shall be recorded in the probate court as all other contested wills are recorded in the probate court."

(Emphasis added.)

Section 43-8-198 adequately and unambiguously describes the requirements necessary for a transfer of the jurisdiction of an unprobated-will contest from the probate court to the circuit court, for the circuit court to adjudicate the contest issues only. The probate court complied with the second

mandate of § 43-8-198 -- the certification of the record to the circuit court; further, the circuit-court clerk correctly docketed the case. However, those actions are ministerial in nature, and do not touch upon, or confer or quicken, jurisdiction in the circuit court. Nothing in the record indicates that the probate court complied with the first mandate of that section -- entering a transfer order. That requirement is not ministerial in nature -- it is a statutorily mandated judicial action, the absence of which results in no jurisdiction being transferred and conferred upon the circuit court. Because will-contest jurisdiction is statutorily conferred, the long-standing procedural requirements of the applicable statute must be complied with exactly. Simpson v. Jones, 460 So. 2d 1282 (Ala. 1984). It is unfortunate that the omission of this order occurred; however, an unfortunate result, in areas of law in which strict compliance with statutes is the guidepost, has never justified ignoring or bending the settled rule of law.

Strict compliance with the plain and unambiguous terms regarding the manner in which will contests are transferred to circuit court is mandatory, and it is my judgment that the

main opinion is both well stated and consistent with established probate law.

STEWART, Justice (concurring specially).

I acknowledge the long line of cases that require strict procedural compliance with the statutes pertaining to will contests, § 43-8-190 et seq., Ala. Code 1975, discussed in the main opinion, and based on those, I must concur with the main opinion, which I authored. The circumstances in this case show that the will-contest-transfer statute, § 43-8-198, Ala. Code 1975, has been complied with sufficiently so as to carry out the intent of the legislature in adopting it. See C.Z. v. B.G., [Ms. 2170976, Sept. 21, 2018] ___ So. 3d ____, ____ (Ala. Civ. App. 2018)(defining the term "substantial compliance" and quoting Smith v. State, 364 So. 2d 1, 9 (Ala. Crim. App. 1978)). Although the principles of equity, along with the totality of the circumstances and the absence of a legislative mandate that § 43-8-198, Ala. Code 1975, be precisely followed to invoke the circuit court's jurisdiction, call for a more flexible analysis in this case, the doctrine of stare decisis does not allow such an analysis.

Justice Sellers, who dissents today, dissented in Burns v. Ashley, [Ms. 1170565, Sept. 28, 2018] ___ So. 3d ___ (Ala. 2018), stating that the probate court's certification of the probate-court record in that case, along with other factors,

constituted substantial compliance with § 43-8-198. Justice Sellers wrote:

> "The probate court's certification, while admittedly not an order per se, substantially complies with the statute in that the probate court acknowledges that the parties desire to take advantage of the equitable powers embodied in the circuit court and to have their will contest heard in that court. This is not an example of a circuit court improperly reaching down to remove a will contest without the knowledge or consent of the probate court. Rather, the probate court here is an accomplice in removing the case, acknowledging and confirming, if not consenting, to the transfer. To now cause the parties who have litigated their issues to, in effect, start over seems to exalt form over substance. The language contained in the probate court's authentication of the record comes very close to the substance of an order and clearly transfers the case file to the circuit court; I am not sure an order could accomplish more. After this case has proceeded through the circuit court, to now require the probate court to enter an order to effectively accomplish what was implicit in the authentication seems a waste of judicial economy."

___ So. 3d at ____ (Sellers, J., dissenting). The same circumstances are present in this case.

Circuit courts "are courts of general jurisdiction with equity powers." Jackson v. Davis, 153 So. 3d 820, 828 (Ala. Civ. App. 2014). See also § 142(b), Ala. Const. 1901 ("The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law."). Furthermore, by enacting § 43-8-198, the legislature unequivocally has

granted circuit courts jurisdiction to hear will contests. Although the statutory language of § 43-8-198 includes the mandatory terms "must" and "shall" pertaining to the duties of the parties and the courts to accomplish the transfer of a will contest to the circuit court, there is no language within the will-contest statutes, § 43-8-190 et seq., mandating strict compliance with the transfer provision of § 43-8-198 in order for the circuit court to obtain subject-matter jurisdiction. See Ex parte Reynolds, 209 So. 3d 1122, 1126 (Ala. Civ. App. 2016) (holding that "'[s]trict compliance' with the [Uniform Interstate Family Support Act] registration procedures is required to confer subject-matter jurisdiction upon an Alabama circuit court to enforce or to modify a foreign child-support judgment" and noting that "[n]o language in the statute itself mandates strict compliance with its provisions, and our previous opinions offer no analysis or discussion as to why strict compliance should be required.").

In Pittman v. Pittman, 419 So. 2d 1376, 1379 (Ala. 1982), this Court defined the term "substantial compliance" as

> "'actual compliance in respect to substance essential to every reasonable objective,' of a decree giving effect to equitable principles--equity--in the true meaning of that word. Application of Santore, 28 Wash. App. 319, 623 P.2d

> 702 (1981). Substantial compliance means compliance which substantially, essentially, in the main, for the most part, satisfies the means of accomplishing the objectives sought to be effected by the decree and at the same time does complete equity. See North Carolina Nat'l Bank v. Burnette, 297 N.C. 524, 256 S.E.2d 388 (1979). What constitutes substantial compliance is a matter dependent upon the particular facts of each case, none ever quite a clone of any other. See Trussell v. Fish, 202 Ark. 956, 154 S.W. 2d 587 (1941)."

Substantial compliance serves as a more reasoned approach than strict technical compliance, particularly in circumstances such as those that exist in the present case, where the intent to transfer is understood by the parties, by the probate court, and by the circuit court; where the procedural misstep is inconsequential to the actual merits of the case; and where there is no real prejudice to any party. Although there is no transfer order in the record, the probate court in the present case, upon a demand of a party to transfer the will contest to the circuit court, certified the record of the probate-court proceedings, and the record was submitted to the circuit court for that court to adjudicate the will contest after holding a three-day trial.

However, this Court's precedent on the issue is well settled and mandates the conclusion reached in the main opinion. Although, writing on a clean slate, I would conclude

that the totality of the circumstances in this case are sufficient to have invoked the circuit court's jurisdiction over Chris Jones's will contest pursuant to § 43-8-198, I reluctantly concur in the majority opinion.

BRYAN, Justice (concurring in the result).

There is no indication that a complaint contesting the will at issue was filed in the circuit court. Moreover, there is no indication that a petition was filed seeking removal of the will contest from the probate court to the circuit court. Therefore, I conclude that the main opinion's discussion of the requirements of §§ 43-8-199 and 12-11-41, Ala. Code 1975, is surplusage that is unnecessary to resolve the issue presented by this appeal, i.e., whether an effective transfer of the will contest from the probate court to the circuit court was accomplished under § 43-8-198, Ala. Code 1975. I agree that, as in Burns v. Ashley, [Ms. 1170565, Sept. 28, 2018] ____ So. 3d ____ (Ala. 2018), the purported transfer in this case was ineffective as a result of the probate court's failure to enter an order transferring the will contest to the circuit court, in accordance with the requirements of § 43-8-198. I therefore concur in the result.

SELLERS, Justice (dissenting).

I respectfully dissent.

Consistent with my dissent in Burns v. Ashley, [Ms. 1170565, Sept. 28, 2018] ___ So. 3d ___ (Ala. 2018), I believe that a probate court's certification required pursuant to § 43-8-198, Ala. Code 1975, is in effect an order, or at least a substitute for an order, perfecting the transfer of a will contest from the probate to the circuit court.

The statute in question reads, in part:

> "Upon the demand of any party to the contest, made in writing at the time of filing the initial pleading, the probate court, or the judge thereof, must enter an order transferring the contest to the circuit court of the county in which the contest is made, and must certify all papers and documents pertaining to the contest to the clerk of the circuit court, and the case shall be docketed by the clerk of the circuit court and a special session of said court may be called for the trial of said contest or, said contest may be tried by said circuit court at any special or regular session of said court. The issues must be made up in the circuit court as if the trial were to be had in the probate court, and the trial had in all other respects as trials in other civil cases in the circuit court."

There is no question that compliance with this statute requires two specific actions on the part of the probate court: (1) entering an order transferring the case; and (2) certifying papers filed in the probate court to the circuit

court. The policy behind requirement (1) is to prevent a circuit court from "reaching down" to remove a will contest without the knowledge or consent of the probate court. The policy behind requirement (2) is to allow a will and other original documents, previously admitted to the probate court, to become part of the record in the circuit court without further authentication. The logic behind these requirements is self-evident.

To fulfill the first requirement, the only language a probate court must use in its order is the phrase "the will contest is hereby transferred."[6] In this specific case, the probate court in its certification stated: "I ... do hereby certify that the foregoing is a true and correct copy of the proceedings for John Michael Jones, deceased, as the same appears of record in this office." That certification was

[6]It is interesting to note that in the probate judge's handbook, 2 Handbook for Alabama Probate Judges (Ala. Law Inst. 10th ed. 2019) (Forms), there is not a sample form for a transfer or removal order; however, because the transfer process is somewhat routine, we can find many examples of will contests that have been transferred to the circuit court using similar language. Perhaps in a future edition of the handbook a sample order might be inserted and/or language added to the probate court's certification of the record to use the magic words the main opinion believes are necessary to actually transfer a will contest.

then filed by the probate court with the circuit court. Thus, the probate court, by certifying the record and filing its record in the circuit court accomplished exactly what an order would do; in this case the will contest -- the actual case file -- was physically transferred by the probate court to the circuit court.

Under the logic of the main opinion, if the probate court's certification had contained the specific transfer language, then this appeal could have been decided on its merits. However, given the intent of the statute, there is no question that the probate court was not only aware its original files were being transferred, but also actually transferred its case file by physically filing its record with the circuit court. I fail to see how those actions can be viewed as anything other than accomplishing the requirements of an order. The action of the probate court in this case accomplished what a transfer order would merely direct. In other words, when this case is viewed in light of the requirements of the statute (i.e., order and certification) and juxtaposed with the actions of the probate court, I can reach no other conclusion than that the spirit and letter of the statute were accomplished.

Perhaps most troubling about the main opinion is that the circuit court conducted a three-day trial, but absent an order with the specific transfer phrase, those three days are now wasted, and the parties are sent back to square one, presumably to ask the probate judge to sign a transfer order so the circuit court can start over and more than likely reach the same result, allowing the appellant to once again file an appeal, which we would then have jurisdiction to consider.

This is the rare case where the law does not achieve justice. If for no other reason than judicial economy, I would deem the certification by the probate court and the actual transfer of the record as an "order" effectuating the intent of and in compliance with § 43-8-198, Ala. Code 1975. This would allow this Court to hear the appeal on its merits, spare the probate and circuit courts from the needless burdens of specific procedural compliance, and save the litigants time and effort, not to mention money. To do otherwise exalts form over substance.