

Rel: May 14, 2021

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**Susan L. Turner**

v.

**Estate of Johnny B. Turner, deceased**

**Appeal from Dale Probate Court  
(No. 20-118)**

WISE, Justice.

Susan L. Turner appeals from a judgment of the Dale Probate Court admitting the will of Johnny B. Turner to probate and granting letters

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testamentary to Lana Rogers. We vacate the judgment and dismiss this appeal.

### Facts and Procedural History

On July 1, 2020, Lana Rogers filed a petition in the Dale Probate Court, requesting that a purported will of decedent of Johnny B. Turner, who died on June 13, 2020, be admitted to probate. On July 27, 2020, Susan Turner filed a will contest pursuant to § 43-8-190, Ala. Code 1975, in the probate court. In that same document, she also requested that the probate court transfer the will contest to the Dale Circuit Court pursuant to § 43-8-198, Ala. Code 1975.

On August 11, 2020, Rogers filed a petition in the probate court asking that letters testamentary be issued to her. On that same date, the probate court conducted a hearing and entered a judgment admitting the will to probate and granting letters testamentary to Rogers. On August 18, 2020, Susan filed a notice of appeal to this Court.

### Discussion

Susan argues that the probate court violated the "clearly mandatory language of Sections 43-8-190 and 43-8-198" when it did not transfer her

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will contest, which was commenced before the will was admitted to probate, to the circuit court. In an appellee's brief that was filed on behalf of the estate of Johnny B. Turner, the estate concedes that,

"[o]nce the Contest was filed by [Susan] prior to the admission of the Will to probate, the Probate Court lacked jurisdiction to hold a hearing to probate the Will and to issue an order that the Will was duly proved. See, e.g., Summerhill v. Craft, 425 So. 2d 1055, 1056 (Ala. 1983); Hodges v. Hodges, 72 So. 3d 687, 691-692 (Ala. Civ. App. 2011) (given mandatory language of § 43-8-198, probate court only had authority to transfer case to Circuit Court)."

We agree.

"Under Alabama law, the probate court has general and original jurisdiction over matters involving the administration of estates and the probating of wills. See Ala. Const. 1901 (Off. Recomp.), art. VI, § 144; and § 12-13-1, Ala. Code 1975. When a party files a will contest, that contest either may be initiated in the probate court pursuant to § 43-8-190, Ala. Code 1975, if the will has not yet been admitted to probate, or may be initiated in the circuit court pursuant to § 43-8-199, Ala. Code 1975, within six months after the will has been admitted to probate.

"Section 43-8-190 which is applicable in this case because Angela's contest of the 2013 will was filed before any will had been admitted to probate, provides as follows:

" '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; and thereupon an issue must be made up, under the direction of the court, between the person making the application, as plaintiff, and the person contesting the validity of the will, as defendant; and such issue must, on application of either party, be tried by a jury.'

"There is no dispute that Angela is a 'person interested' in the 2013 will for purposes of invoking § 43-8-190 or that the contest did not otherwise comply with that Code section. Thus, the filing of her contest in the probate court was proper pursuant to that Code section. Angela simultaneously filed with her will contest a request to have the contest transferred to the circuit court. Section 43-8-198, Ala. Code 1975, allows a party to seek a transfer of a will contest from the probate court to the circuit court and 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, 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."

"(Emphasis added.) For purposes of § 43-8-198, Angela, as the contestant, was a 'party to the contest,' and her request to transfer was 'made in writing at the time of filing the initial pleading,' that is, in a pleading contesting the 2013 will. See Kaller ex rel. Conway v. Rigdon, 480 So. 2d 536, 539 (Ala. 1985) ('The "initial pleading" for the contestant in a will contest is the filing of the contest itself in the probate court.').

"Alabama caselaw states:

" '[O]nce a will contestant seeking to remove the contest pursuant to § 43-8-198 makes a prima facie showing that he or she is a person described in § 43-8-190[, Ala. Code 1975, which pertains to who may contest a will] as one 'interested therein,' the probate court 'must enter an order transferring the contest to the circuit court.' " [Ex parte McLendon,] 824 So. 2d [700] at 705 [(Ala. 2001)] (quoting § 43-8-198; emphasis added in McLendon). Just as a court lacking subject-matter jurisdiction has no authority to do anything other than enter a judgment of dismissal, see Cadle Co. v. Shabani, 4 So. 3d 460, 463 (Ala. 2008), a probate court confronted with a proper and timely transfer demand accompanying a will contest can do nothing but comply with the mandate of the legislature and refer 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 was replaced by § 43-8-198). Therefore ... the filing of the [request to transfer] triggered a mandatory duty on the part of the probate court to transfer the contest to the circuit court forthwith, and without

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further action touching on the validity of the will submitted by the proponent ....'

"Hodges v. Hodges, 72 So. 3d 687, 691 (Ala. Civ. App. 2011). Thus, once a party files a proper demand for transfer of a will contest to the circuit court, the probate court is required to enter a written order transferring the will contest, see § 43-8-198, and the probate court has no authority to do anything other than timely refer the contest to the appropriate circuit court."

Weems v. Long, [Ms. 1190369, April 16, 2021] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2021).

Similarly, in this case, once Susan, who is undisputedly a "person interested" in the will, filed her demand for the transfer of her will contest to the circuit court, the probate court was required to enter a written order transferring the will contest pursuant to § 43-8-198, and the probate had no authority to do anything other than timely refer the contest to the circuit court. "Because the probate court lacked jurisdiction in this case, its judgment is void. A void judgment will not support an appeal. It is this Court's obligation to vacate such a judgment and dismiss the appeal." Russell v. Fuqua, 176 So. 3d 1224, 1229 (Ala. 2015) (internal citations and footnote omitted).

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JUDGMENT VACATED; APPEAL DISMISSED.

Parker, C.J., and Bolin, Sellers, and Stewart, JJ., concur.