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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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**Theodore Branch, Jr., Denise Whisenhunt, Wanda Standfield,
Yulonda Branch, Monique Branch, and Darin Branch**

v.

Angela Branch

**Appeal from Walker Circuit Court
(CV-20-900117)**

STEWART, Justice.

Theodore Branch, Jr., Denise Whisenhunt, Wanda Standfield,
Yulonda Branch, Monique Branch, and Darin Branch appeal from an

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order of the Walker Circuit Court ("the circuit court") dismissing their action challenging their father's will based on a lack of subject-matter jurisdiction. For the reasons discussed herein, we affirm the order of dismissal.

Facts and Procedural History

Theodore W. Branch, Sr. ("the father"), died testate December 3, 2019, survived by his seven children: Angela Branch, Theodore Branch, Jr., Denise Whisenhunt, Wanda Standfield, Yulonda Branch, Monique Branch, and Darin Branch. On January 16, 2020, Angela petitioned the Walker Probate Court ("the probate court") to probate a will that the father had executed on October 31, 2018 ("the will"). The will devised all of the father's property to Angela and omitted any reference to the father's other six children (hereinafter referred to collectively as "the omitted children"). On March 6, 2020, the omitted children filed a response to Angela's petition to probate the will in which they contested the validity of the will, asserting that the father had not been competent to execute the will and that Angela had exerted undue influence to procure the father's execution of the will and to obtain from the father the transfer of

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certain real and personal property. The omitted children also asserted that a previous will executed by the father in 2017 better reflected his final wishes. On March 10, 2020, the omitted children filed a petition in the probate court, requesting the removal of the administration of the father's estate to the circuit court; the probate court never acted on that petition.

On April 24, 2020, the omitted children filed in the circuit court what they styled as a "Petition to Contest Purported Will." In that petition, the omitted children raised the same allegations and arguments that they had raised in their will contest filed in the probate court, including seeking the cancellation of certain conveyances of the father's real and personal property. The omitted children also later filed in the circuit court a motion for a temporary restraining order in which they asked the circuit court to restrain all parties from damaging, depreciating, or using estate assets until the circuit court entered a final judgment in the circuit-court action.¹ Angela filed a motion to dismiss the circuit-court

¹Both Angela and the omitted children filed requests in the probate court for the appointment of a special administrator ad colligendum. See

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action on several grounds, including the circuit court's lack of subject-matter jurisdiction.

The probate court entered an order on June 17, 2020, finding that the omitted children had not proven that the father had lacked competency at the time of the execution of the will or that the will had been procured by undue influence. On the same day, the probate court entered an order admitting the will to probate and an order granting letters testamentary to Angela. On August 3, 2020, Angela filed in the circuit court a brief in support of her motion to dismiss in which she argued that the circuit court lacked subject-matter jurisdiction over the circuit-court action because the omitted children had filed their petition to contest the will in the circuit court before the will had been admitted to probate, because the omitted children had already filed a will contest in the probate court, and because the probate court had not transferred the administration of the estate to the circuit court. Angela attached to her brief the probate court's June 17, 2020, order admitting the will to

§ 43-2-47, Ala Code 1975, and note 3, *supra*.

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probate. In response, the omitted children asserted that the circuit-court action involved a request to cancel certain conveyances of the father's real and personal property and a request for a temporary restraining order, that those requests sought equitable relief, and that, therefore, only the circuit court had jurisdiction to consider those requests. The omitted children also stated that they were not seeking to appeal the probate court's decision on the will contest or to remove the proceedings in the probate court.

On August 12, 2020, the circuit court entered an order purporting to transfer the administration of the father's estate, including the omitted children's will contest, from the probate court to the circuit court. The circuit court also entered an order denying Angela's motion to dismiss and an order granting the omitted children's motion for a temporary restraining order. On Angela's motion to reconsider, however, the circuit court reversed course and entered an order concluding that it did not have subject-matter jurisdiction. The circuit court, therefore, dismissed the omitted children's action. The omitted children appealed.

Discussion

This Court reviews a ruling on a motion to dismiss based on a lack of subject-matter jurisdiction without a presumption of correctness. Newman v. Savas, 878 So. 2d 1147, 1148 (Ala. 2003). The circuit-court action was commenced when the omitted children filed a petition to contest the will. In Jones v. Brewster, 282 So. 3d 854 (Ala. 2019), this Court discussed how probate courts and circuit courts may acquire jurisdiction over will contests and the administration of estates:

" ' ' '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, 274 So. 3d 970, 973 (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 [§ 43-8-198], 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:

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" '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.' "

282 So. 3d at 857-58.

The omitted children contend that the circuit court had jurisdiction over their action pursuant to § 43-8-199, Ala. Code 1975. Citing Noe v. Noe, 679 So. 2d 1057 (Ala. Civ. App. 1995), the omitted children appear to contend that a will contest may properly be "moved" from a probate court to a circuit court, and that the circuit court may exercise jurisdiction of the will contest under § 43-8-199, without the necessity of filing "a new or different complaint from the one filed in the probate court" in the circuit court. In Noe, the contestants filed a will-contest complaint in the Jefferson Probate Court after the will had been admitted to probate, and then the contestants filed a "copy" of that complaint in the Jefferson Circuit Court, seeking to initiate a will contest under § 43-8-199 in that circuit court. The issue in that case was whether the identical filing constituted an original complaint in the circuit court. The issue was not

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whether the probate court or the circuit court had jurisdiction over the will contest, as is the case here. The omitted children appear to misunderstand the holding in Noe and the jurisdictional requirements of § 43-8-199. Noe has no application to the current case.

For the circuit court in this case to acquire jurisdiction over the omitted children's will contest pursuant to § 43-8-199, the omitted children were required to file a petition in the circuit court after, and within six months of, the admission of the will to probate. However, the omitted children's petition was filed in the circuit court on April 24, 2020, which was before the will was admitted to probate on June 17, 2020. Moreover, to maintain a will contest in circuit court under § 43-8-199, the omitted children must not have already contested the will. However, the omitted children had already commenced a will contest in the probate court on March 6, 2020. Accordingly, because the omitted children had already commenced a will contest in the probate court, and because they had commenced their will contest in the circuit court before the will was admitted to probate, the omitted children did not strictly comply with § 43-8-199 so as to invoke the circuit court's jurisdiction under that statute

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to consider their will contest. See Jones, 282 So. 3d at 858 ("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.").

The only other statute under which the circuit court could have obtained jurisdiction over the will contest is § 43-8-198, Ala. Code 1975, which permits the transfer of a will contest from a probate court to a circuit court under certain circumstances. For the circuit court to acquire jurisdiction pursuant to § 43-8-198, however, the omitted children were required to file with their initial pleading, and before the will was admitted to probate, a request to transfer the contest to the circuit court. See Newman, 878 So. 2d at 1149 (explaining that the transfer request must be filed with the initial pleading, which is " 'the filing of the contest itself in the probate court.' Marshall v. Vreeland, 571 So. 2d 1037, 1038 (Ala. 1990)."). The omitted children did not file in the probate court a request to transfer the will contest with their initial filing, and the probate court never entered an order transferring the will contest to the

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circuit court. Accordingly, the omitted children did not invoke the circuit court's jurisdiction to entertain their will contest pursuant to § 43-8-198.

The omitted children also argue that, pursuant to § 12-11-41, Ala. Code 1975, the circuit court had jurisdiction over the administration of the father's estate. Probate courts have original jurisdiction over the administration of estates pursuant to Ala. Const. 1901 (Off. Recomp.), art. VI, § 144; and § 12-13-1, Ala. Code 1975. Although the administration of an estate can be removed from a probate court to a circuit court pursuant to § 12-11-41, " '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 court's acquisition of jurisdiction over the administration of the estate' " Jones, 282 So. 3d at 858 (quoting DuBose v. Weaver, 68 So. 3d 814, 822 (Ala. 2011)). In this case, the circuit court entered an order on August 12, 2020, purporting to transfer the administration of the estate and the will contest from the probate court. There is no statutory authority permitting a circuit court to transfer a will contest to itself. Moreover, for the circuit court to acquire jurisdiction over the administration of the estate, the omitted children were required to file a petition for removal in the circuit

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court. The omitted children filed a petition to remove the administration of the estate in the probate court -- not the circuit court as required by § 12-11-41. Accordingly, insofar as the circuit-court action could be construed as an action seeking the administration of the father's estate, the omitted children did not invoke the circuit court's jurisdiction pursuant to § 12-11-41.²

The omitted children also assert that the circuit-court action was equitable in nature and was not a will contest. More specifically, the omitted children assert that their request to cancel conveyances of real and personal property and their request for a temporary restraining order were equitable in nature and that, because the probate court does not have equitable jurisdiction, they were required to seek that relief in the circuit court. See Daniel v. Moye, 224 So. 3d 115, 140 (Ala. 2016) (explaining that, with the exception of a few counties, probate courts lack

²The omitted children also assert that, "[w]hen this matter was filed in circuit court, it was removed from the probate court to a court of equity." Omitted children's brief at p. 18. As explained above, however, there are procedural prerequisites that must be met to remove the administration of an estate from a probate court to a circuit court, see §12-11-41, and those prerequisites were not met in this case.

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equitable jurisdiction). The omitted children's argument fails for several reasons. As explained above, the omitted children commenced the circuit-court action by filing a petition to contest the will. Insofar as the omitted children attempted to join claims challenging the previous execution of deeds and other transactions related to the father's estate, this Court has held that a will-contest action is limited to determining the validity of the will and that other claims, such as those to cancel deeds, are not properly joined in a will-contest action. See Ex parte Walter, 202 Ala. 281, 284, 80 So. 119, 122 (1918) (holding that matters concerning the execution of a deed and the sale of personal property were collateral and immaterial in a will-contest proceeding); and Nesmith v. Vines, 248 Ala. 72, 73, 26 So. 2d 265, 266 (1946)(same); see also Daniel v. Moye, 224 So. 3d at 140 (holding that "the circuit court would have subject-matter jurisdiction over properly pleaded claims for an accounting and alleging improper inter vivos transfers ... as part of the general administration of [a decedent's] estate" only in a properly transferred action to administer an estate).

Furthermore, insofar as the omitted children assert that their request for a temporary restraining order rendered the circuit-court action

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equitable in nature, the omitted children did not request a temporary restraining order in their will-contest petition. Instead, they filed a motion for a temporary restraining order after they had already commenced the will-contest action. As explained above, the circuit court lacked subject-matter jurisdiction to entertain the omitted children's will contest and, as Angela points out, the circuit court could not enter temporary injunctive relief in the circuit-court action because it lacked subject-matter jurisdiction over that action. See, e.g., Citizenship Tr. v. Keddie-Hill, 68 So. 3d 99, 106 (Ala. 2011)(holding that a trial court's order granting preliminary injunctive relief was due to be vacated when the trial court lacked subject-matter jurisdiction to adjudicate issues in a civil proceeding that would have been appropriately decided in a criminal proceeding).

We also note that the relief requested by the omitted children in their motion for a temporary restraining order related to the protection and preservation of assets of an estate. Those are matters properly handled as part of the administration of an estate, which falls under the probate court's original jurisdiction. See Ala. Const. 1901 (Off. Recomp.), art. VI, § 144; and § 12-13-1, Ala. Code 1975. As explained above, the

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estate administration was never properly removed from the probate court to the circuit court. Furthermore, the preservation of estate assets sought in the omitted children's motion for a temporary restraining order could have been accomplished in the probate-court action, pending the grant of letters testamentary, by the appointment of an administrator ad colligendum, which both Angela and the omitted children requested. See § 43-2-47(a), Ala. Code 1975; see also note 1, supra.³

The circuit court lacked subject-matter jurisdiction to consider the omitted children's action because they did not strictly comply with statutory prerequisites to invoke that court's jurisdiction. Therefore, the circuit court correctly dismissed the action.

³Section 43-2-47(a), Ala. Code 1975, provides:

"The judge of probate may, in any contest respecting the validity of a will, or for the purpose of collecting the goods of a deceased, or in any other case in which it is necessary, appoint a special administrator, authorizing the collection and preservation by him of the goods of the deceased until letters testamentary or of administration have been duly issued."

The authority of any appointed special administrator ceases upon the grant of letters testamentary. See § 43-2-47(d).

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Conclusion

For the foregoing reasons, the circuit court's order dismissing the omitted children's action based on a lack of subject-matter jurisdiction is affirmed.

AFFIRMED.

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