

Rel: September 2, 2022

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1200333

Gwendolyn Barnett

v.

Robert Lee Hull, Jr.

1200437

Gwendolyn Barnett

v.

Robert Lee Hull, Jr.

Appeals from Autauga Circuit Court
(CV-20-900192)

1200333; 1200437

SHAW, Justice.

Gwendolyn Barnett appeals from orders granting relief to Robert Lee Hull, Jr. We reverse and remand.

Facts and Procedural History

Barnett and Hull are siblings and the sole legal heirs of their father, Robert Lee Hull, Sr. ("Robert"), who died testate. Pursuant to Robert's will, Hull and Barnett were listed as beneficiaries entitled to equal shares of his estate and Barnett was named personal representative of his estate. In August 2019, Barnett obtained letters testamentary from the Autauga Probate Court. The administration of Robert's estate ("the estate administration") was later removed to the Autauga Circuit Court and assigned case no. CV-19-900322 following Hull's filing of a verified petition for removal.

While the estate administration continued, Hull commenced the underlying action, a separate civil action against Barnett in the Autauga Circuit Court ("the tort action"), which was assigned case no. CV-20-900192. Hull's complaint in the tort action alleged that Barnett, in her

1200333; 1200437

role as "a partial caretaker of [Robert]" before his death, had exerted undue influence over Robert and had gained control of Robert's personal property and assets. According to Hull, in the absence of Barnett's purported misconduct, items that Barnett allegedly misappropriated would "have become part of [Robert's] estate." Among other relief, Hull sought the imposition of a constructive trust "in an effort to avoid [Barnett's] further unjust enrichment." In other words, in the tort action, Hull was attempting to collect and preserve the estate's assets for himself as a beneficiary. Hull's claims in the tort action were asserted against Barnett in her "individual capacity" rather than in her capacity as the personal representative of Robert's estate. The tort action was assigned to a different judge than the judge presiding over the estate administration.

Barnett filed a motion seeking to dismiss the tort action. In her motion, Barnett asserted that Hull's complaint in the tort action realleged claims purportedly "identical" to claims that Hull had previously asserted in the estate administration, which had been

1200333; 1200437

dismissed.¹ Barnett argued both that principles of res judicata barred the tort action and that "because [the estate administration] remains pending ... the initiation of [the tort action] creates a substantial likelihood of conflicting judgments between the two matters."

Before the scheduled hearing date on Barnett's motion, Hull filed a "Motion to Preserve Status Quo" in which he requested that Barnett be required to preserve any assets gained from Robert within the last three years of his life that remained in her possession; that Barnett be required to provide money to be held in trust equal in value to any such asset that had been previously disposed of; and that Barnett be required to provide a full accounting of all such assets as well as their present location.

The trial court subsequently entered an order granting Hull's

¹The trial court's order dismissing those claims in the estate administration is the only document from that separate case that appears in the record. That order does not recite Barnett's arguments in support of dismissal and does not include the findings on which the dismissal was based; instead, it provides, in pertinent part: "After reviewing the Amended Complaint and the motion to dismiss, considering the grounds for dismissal, and procedural requirements laid out in the Alabama Rules of Civil Procedure, the motion to dismiss is well taken and due to be granted."

1200333; 1200437

motion in full ("the injunctive order"). Barnett timely filed a notice of appeal from the injunctive order to the Alabama Court of Civil Appeals, see Rule 4(a)(1)(A), Ala. R. App. P.; that court subsequently transferred the appeal to this Court (appeal no. 1200333) based on its conclusion that it lacked jurisdiction.

Hull thereafter filed a response opposing Barnett's motion to dismiss. In particular, Hull alleged that, in support of her earlier effort to dismiss his purportedly "identical" claims from the estate administration, Barnett had argued that Hull "'failed to file a separate action or claim against other parties which [sic] this honorable Court may grant any relief.'" Hull thus characterized the gravamen of Barnett's dismissal request in the estate administration as follows:

"In essence, it seems by the arguments made by [Barnett], due to the failure of [Hull] to file a separate action, the Circuit Court lacked jurisdiction at the time of the disposition of [Barnett's] Motion to Dismiss [over Hull's claims in the estate administration]. [Barnett] stated 'only the Estate administration was pending, leaving nothing else to consolidate.' ... The administration of said estate would be pending in the Autauga County Probate Court, therefore, that court would have the appropriate subject matter jurisdiction to hear issue [sic] relating to the estate."

1200333; 1200437

The trial court subsequently denied Barnett's motion to dismiss. Thereafter, Barnett filed an answer to Hull's complaint in which she alleged that, following removal of the estate administration to the circuit court, "all litigation regarding whether or not property rightfully belongs in the estate has occurred in [that] case...." Barnett also filed a "Motion to Transfer and Consolidate," in which she argued that, "[b]ecause the issues in [the tort action] hinge entirely upon whether or not disputed property should be included in the Estate ..., these issues would be better heard as a part of the Estate administration."

While Barnett's motion for consolidation remained pending, Hull filed a "Motion to Show Cause" alleging that Barnett had failed to timely perform the accounting required by the injunctive order and seeking related sanctions. Before ruling on that motion, the trial court denied Barnett's consolidation request.

Thereafter, Barnett filed a response to Hull's show-cause motion in which she argued that the trial court lacked jurisdiction over the tort action and that both Hull's show-cause motion and the injunctive order

1200333; 1200437

failed to comport with Alabama law; in the alternative, she sought to stay operation of the injunctive order. Following a hearing, the trial court entered an order ("the show-cause order") directing Barnett to provide the missing accounting as to certain specified funds within 10 days, taxing her with Hull's attorneys' fees stemming from the show-cause motion, and denying Barnett's motion seeking to stay operation of the injunctive order. Consequently, Barnett timely filed a second notice of appeal, challenging the show-cause order, to this Court (appeal no. 1200437). This Court has consolidated the appeals for the purpose of issuing one opinion.

Discussion

On appeal, among other things, Barnett contends that the trial court lacked jurisdiction over Hull's claims in the tort action, which she describes as "central to the administration of the estate," while the estate administration remains separately pending. In her filings to this Court, Barnett characterizes Hull's claims as "seek[ing] to identify property which he alleges should have been considered property of the Estate ... in

1200333; 1200437

the [first-filed] estate administration." We agree.

As to the administration of an estate, this Court has recently explained:

"Generally, when a person dies, the assets of his or her estate, both real property and personal property, devolve to the proper recipients pursuant to the provisions of § 43-2-830, Ala. Code 1975. The administration of an estate broadly refers to the process of making an inventory of estate assets; collecting, safeguarding, and managing the estate; paying the lawful debts of the decedent, as well as the fees incurred in and the costs of administration; and distributing the remaining property to either the heirs at law in cases of intestacy or beneficiaries taking pursuant to the terms of a valid will in testate proceedings. Put another way, the end game of the administration of an estate is the ultimate distribution of remaining estate assets pursuant to law and guided either by the terms of a decedent's valid will or by the laws of descent and distribution of this State. See § 43-8-1 et seq., Ala. Code 1975."

Segrest v. Segrest, 328 So. 3d 256, 266 (Ala. 2020) (footnote omitted; emphasis added).

In Segrest, we further observed the following with regard to the process of removing the administration of a decedent's estate from a probate court to a circuit court:

"The probate court has both original and general

1200333; 1200437

jurisdiction over matters relating to the administration of an estate. § 12-13-1, Ala. Code 1975. The circuit court may acquire subject-matter jurisdiction over the administration of an estate if the administration of the estate is properly removed from the probate court to the circuit court pursuant to § 12-11-41[, Ala. Code 1975]. ...

"'....'

"... Thus, the removal of an estate, pursuant to § 12-11-41, Ala. Code 1975, invokes the circuit court's jurisdiction over the ongoing administration of the estate, i.e., authorizes the circuit court to conduct the administration of the estate pursuant to statute and, in testate proceedings, pursuant to the terms and provisions of the will. ...

"In Oliver v. Johnson, 583 So. 2d 1331, 1332 (Ala. 1991), this Court discussed the effect of the removal of the administration of an estate from the probate court to the circuit court and the circuit court's authority, stating:

""[A] probate court ... shall have ... power to grant letters testamentary, and of administration ... provided, that whenever the circuit court has taken jurisdiction of the settlement of any estate, it shall have power to do all things necessary for the settlement of such estate"

"'....'

1200333; 1200437

"Once the administration and settlement of an estate are removed from the probate court, the probate court loses jurisdiction over the estate, and the circuit court obtains and maintains jurisdiction [over the estate] until the final settlement of the estate.

""[T]he administration and settlement of a decedent's estate ... is a single and continuous proceeding; and when the administration of an estate is once removed from the probate court into a [circuit court], its jurisdiction becomes exclusive and efficient, and the court must operate to a final settlement governed by its own procedure."

"Hinson v. Naugher, 207 Ala. 592, 593, 93 So. 560, 561 (1922).'

"(Some emphasis added.)"

328 So. 3d at 268-69. See also Ex parte Grant, 170 So. 3d 652, 655 (Ala. 2014) (explaining that, following the removal of the administration of an estate from a probate court to a circuit court, that circuit court retained "exclusive jurisdiction" over the administration of the estate and, accordingly, that a circuit court in another county lacked "subject-matter jurisdiction to entertain collateral attacks on the administration of the

1200333; 1200437

estate"), Martin v. Clark, 554 So. 2d 1030, 1032 (Ala. 1989) ("It is ... well settled in this state that the court first assuming jurisdiction of a cause, the subject matter being within the competency of such court, must be allowed to pursue and exercise its jurisdiction to the exclusion of all coordinate tribunals.'" (quoting Orton v. Cheatham, 293 Ala. 639, 643, 309 So. 2d 94, 96 (1975))), and Article VI, § 144, Ala. Const. 1901 (Off. Recomp.) (describing the power of a circuit court upon removal, in part, as follows: "[W]henever the circuit court has taken jurisdiction of the settlement of any estate, it shall have power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians, and trustees").

In light of the foregoing, once the estate administration was removed from probate court to circuit court, the circuit court to which the estate administration was removed assumed the probate court's statutorily prescribed jurisdiction and became the tribunal invested with general and exclusive jurisdiction over the administration of Robert's estate -- including the collection of all assets that should be properly

1200333; 1200437

included therein. Hull's claims in the tort action, which are apparently identical to the claims that he had previously asserted in the estate administration, are indisputably based solely on his status as a beneficiary of Robert's will; thus, his contention that Barnett wrongfully appropriated assets that should have been properly included in Robert's estate is, as Barnett argues, central to the estate administration.

Hull, despite his undisputed status as a beneficiary of Robert's will, possesses neither the authority to collect nor the authority to recover purported assets of Robert's estate, which responsibility belongs to the personal representative of the estate. See § 43-2-837, Ala. Code 1975 (noting that the duties of a personal representative include "a right to ... take possession or control of... the decedent's property" that is deemed "necessary for purposes of administration" and that a personal representative "may maintain an action to recover possession of property or to determine the title thereto"). Further, the collection of assets is, as established above, necessarily included within the estate administration, which is already separately pending.

1200333; 1200437

Assuming, as Hull alleges, that Barnett misappropriated money or property from Robert during his lifetime that would otherwise have been included in Robert's estate, the recovery of such assets was the responsibility of the personal representative. Furthermore, assuming, as Hull also alleges, that Barnett, the personal representative of Robert's estate, was responsible for any alleged misappropriation, the appropriate remedy would be her removal as personal representative and the entry of an order from the court overseeing the administration of Robert's estate requiring her to make reparations to the estate for any established misconduct. See, generally, Player v. J.C., 299 So. 3d 945, 952 (Ala. 2020), and McGallagher v. Estate of DeGeer, 934 So. 2d 391, 401-03 (Ala. Civ. App. 2005). In that event, Robert's estate, rather than any individual beneficiary of Robert's will, would have been responsible for the costs of any litigation aimed at preserving or recovering estate assets "as 'fees and charges of administration' under § 43-2-371(2)[, Ala. Code 1975]." Archer v. Estate of Archer, 45 So. 3d 1259, 1264 (Ala. 2010).

In sum, for a full and final administration of Robert's estate to

1200333; 1200437

occur, the personal representative is statutorily charged with collecting all purported assets of that estate for final settlement and distribution in accordance with Robert's will. See McCann v. Ellis, 172 Ala. 60, 69, 55 So. 303, 305 (1911) ("It has been uniformly ruled ... that proceedings to probate or to set aside the probate of wills are proceedings in rem and not in personam; that such proceedings are exclusively to determine the status of the res, and not the rights of the parties."). See also Allen v. Estate of Juddine, 60 So. 3d 852, 856 (Ala. 2010) (Bolin, J., concurring specially). Compare Segrest, 328 So. 3d at 271 (explaining that, in a will-contest proceeding instituted pursuant to § 43-8-199, Ala. Code 1975, "no one is trying to recover anything from anyone; rather, a will contest is a limited proceeding to determine whether the decedent died testate or intestate"). By statute, jurisdiction over the administration of an estate follows the administration action when it is removed from probate court to circuit court. Therefore, it is the court to which the administration of an estate was removed that possesses jurisdiction over the details of the estate, thus keeping the estate administration before a single tribunal

1200333; 1200437

and avoiding the possibility of inconsistent outcomes.

Because we hold that the trial court lacked jurisdiction over the tort action, and thus also lacked jurisdiction to enter either the injunctive order or the subsequent show-cause order, it is unnecessary that we address Barnett's claims that those orders are procedurally defective.

Conclusion

For the foregoing reasons, we conclude that the trial court lacked jurisdiction over matters relating to the pending estate administration. Thus, it lacked jurisdiction to enter either the injunctive order or the subsequent show-cause order compelling Barnett's compliance with the injunctive order. We therefore reverse all orders entered by the trial court in the tort action and remand the matter for that court to enter an order dismissing Hull's complaint. See Taylor v. Paradise Missionary Baptist Church, 242 So. 3d 979, 997 (Ala. 2017) (Murdock, J., concurring specially) ("Because the trial court had jurisdiction [to decide whether it had jurisdiction over the dispute before it], its decision addressing that issue is not void for lack of jurisdiction. Likewise, because the trial court

1200333; 1200437

had jurisdiction over that issue, this Court has jurisdiction over the appeal of its judgment as to that issue and, accordingly, this Court's 'reversal' of the trial court's judgment is appropriate.").

1200333 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

1200437 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Bolin, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.