

Rel: January 21, 2022

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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**David M. Miles**

v.

**Sharma Helms**

**Appeal from Houston Circuit Court  
(CV-21-2)**

BOLIN, Justice.

David M. Miles appeals from the Houston Circuit Court's order denying his postjudgment motion seeking to alter, amend, or vacate a judgment appointing a guardian for Nadine Chalmers. The administration of the guardianship was purportedly removed to the circuit

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court from the Houston Probate Court; however, the removal was not proper under § 26-2-2, Ala. Code 1975, and, thus, the circuit court never acquired subject-matter jurisdiction. We therefore dismiss the appeal.

### Facts and Procedural History

On September 25, 2018, Chalmers executed an advanced directive for health care drafted by her attorney, describing the types of health care Chalmers wished to receive or not receive if she was unable to make decisions concerning her health care. The directive named Miles, her nephew, as her health-care proxy. On December 20, 2018, Chalmers executed a power of attorney naming Miles as her attorney-in-fact and authorizing him to make decisions concerning her property. The power of attorney provided that if it became necessary for a court to appoint a conservator or guardian for her, Chalmers nominated Miles to serve in such capacity.

In February 2019, Chalmers had a stroke and was placed in the memory ward of a nursing home. In November 2019, Sharma Helms, Chalmers's niece, visited Chalmers at the nursing home. On March 17, 2020, Helms filed in the probate court a petition seeking the appointment

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of a temporary guardian for Chalmers, a petition seeking the appointment of a guardian for Chalmers, and a petition seeking the appointment of a conservator for Chalmers. On March 19, 2020, Helms filed a motion requesting that Chalmers be evaluated by a qualified medical professional. On March 26, 2020, the probate court granted the motion. The report resulting from that evaluation noted that Chalmers suffers from dementia.

On May 19, 2020, Miles filed a notice of appearance on behalf of Chalmers. On June 2, 2020, Helms filed a motion requesting: (1) an order of temporary guardianship; (2) appointment of a guardian ad litem; and (3) appointment of a court representative. On June 4, 2020, the probate court entered an order appointing Helms as Chalmers's temporary guardian. On June 8, 2020, Miles filed a motion to alter, amend, or vacate the order appointing Helms as temporary guardian and a motion to dismiss Helms's petitions. On June 10, 2020, Miles filed a petition for letters of temporary guardianship. The probate court subsequently appointed a guardian ad litem for Chalmers and a court representative.

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Following a hearing, the probate court vacated its order appointing Helms as temporary guardian. The probate court also dismissed Miles's petition for letters of temporary guardianship. The probate court stated that, pending a final hearing in the matter, Miles would act under the authority granted to him under the advanced directive for health care and the power of attorney. On October 28, 2020, the probate court held a hearing on Helms's guardianship and conservatorship petitions. Chalmers testified that she had not fully understood the powers she was conveying when she appointed Miles as her health-care proxy and her attorney-in-fact. Chalmers also stated that she was not happy with Miles serving as her health-care proxy and her attorney-in-fact. She testified that she had not seen or spoken with Miles in a long time and that when she needs personal items, Helms provides those things for her. Chalmers testified that she wanted Helms to act on her behalf. Other witnesses at the hearing included Miles, Helms, additional family members, and a staff member at the nursing home. In November 2020, after the hearing on Helms's petitions, Miles filed a petition requesting that he be appointed as Chalmers's conservator.

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On December 16, 2020, the probate court entered the following judgment:

"This cause came to be heard before this Court on October 28, 2020, for the appointment of Guardian and Conservator over Nadine Chalmers, an incapacitated person, on the petition of Sharma Helms, ... specifically, for the appointment of Sharma Helms as Guardian of Nadine Chalmers, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act (Code of Alabama, Section 26-2A-1 et seq., 1975); and it appears to the Court that venue and jurisdiction are proper, and that notice of the proceedings was given to those entitled and proof of the same filed.

"There appeared at the hearing Sharma Helms, Petitioner, John E. Byrd, Jr., Esquire, and David A. Jones, Esquire, attorneys for Petitioner; Jordan Reeves Brooks, Esquire, the Guardian ad Litem for Nadine Chalmers; Tildon J. Haywood, Esquire, Court Representative; Nadine Chalmers, Respondent; David M. Miles, attorney-in-fact for the Respondent; and R. Cliff Mendheim, Esquire, attorney for David M. Miles.

"Subsequently, David M. Miles, by and through counsel, R. Cliff Mendheim, Esquire, filed a Petition for Letters of Conservatorship, a Motion to Waive Conservator's Bond, and a Motion to Dismiss or in the Alternative Motion to Reinstate and Grant Petition for Guardianship and Petition for Conservatorship. Additionally, John E. Byrd, Jr., Esquire, as counsel for Sharma Helms, filed a Notice to the Court providing the Court with a list of the Respondent's assets.

"Upon due consideration of evidence and testimony presented in open Court and upon consideration of all pleadings filed in this matter, this Court finds as follows:

"Guardianship

"This Court finds that a basis for the appointment of a guardian has been established per Alabama Code Section 26-2A-102 (as amended).

"Alabama Code Section 26-2A-104 (b) provides that unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney. In this case, the Respondent executed an Alabama Uniform Power of Attorney on December 20, 2018, nominating David M. Miles as guardian of her person should the appointment of a guardian become necessary. Therefore, David M. Miles has priority consideration for the appointment of guardian over Nadine Chalmers.

"Though this Court finds that David M. Miles is sufficiently qualified to serve as guardian, the Respondent's testimony, albeit seemingly affected by her diagnosis of dementia, revealed that she would prefer Sharma Helms serve in the role of guardian. The Respondent not merely prefers Sharma Helms, but has convinced herself, in the Court's opinion, that David M. Miles does not have her best interest at heart, and although the Court finds no evidentiary basis for her belief, it is nevertheless her belief. Consequently, the Court believes the Respondent would not be best served by David M. Miles remaining as her healthcare power of attorney. Based upon consideration of the Respondent's perceived reality and the totality of circumstances, this Court finds it would be in the

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best interest of Nadine Chalmers to appoint Sharma Helms as guardian rather than the priority candidate, David M. Miles.

### "Conservatorship

"Code Section 26-2A-130[(c)] provides as follows:

" 'Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage property and business affairs effectively for such reasons as mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and that (ii) (aa) the person has property that will be wasted or dissipated unless property management is provided, or that (bb) funds are needed for the health, support, education, or maintenance of the person or of those entitled to the person's support and that protection is necessary or desirable to obtain or provide the funds.'

"Upon due consideration of all evidence and testimony presented, this Court does not find that all of the criteria set forth above have [been] met and, therefore, does not find a basis for the appointment of conservator of Nadine Chalmers. This Court finds that the majority of the Respondent's assets are held in trust, in the Nadine Chalmers Living Trust, and would not be subject to a conservatorship. Additionally, evidence shows David M. Miles, as attorney-in-fact, is able to sufficiently manage the Respondent's assets accessible to him in order to meet his fiduciary duty to the Respondent.

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Accordingly, this Court finds that the Petition for the Appointment of Conservator is due to be denied and dismissed.

"Conclusion

"Based on the foregoing, it is hereby ordered, adjudged, and decreed as follows:

"The petition for the appointment of guardian of Nadine Chalmers is hereby granted; and Sharma Helms be and is hereby appointed Guardian of Nadine Chalmers and shall have all powers and duties of a Guardian conferred under the Alabama Uniform Guardianship and Protective Proceedings Act (Code of Alabama, Section 26-2A-1 et seq., 1975). The Guardian is granted the additional power and duty to continue or discontinue any medical treatment, procedure, or intervention that in the judgment of the attending physician, when applied to the incapacitated person, would serve only to prolong the dying process where the incapacitated person has a terminal illness or injury or would serve only to maintain the incapacitated person in a condition of permanent unconsciousness, as defined in Section 22-8A-4 Code of Alabama 1975 (as amended); and as provided in Section 22-8A-11 Code of Alabama 1975 (as amended).

"It is further ordered that Nadine Chalmers be prohibited [from] modifying estate planning documents as this Court finds from evidence and testimony presented that Nadine Chalmers lacks the mental capacity to do so.



"It is further ordered by the Court that the Guardian does not have the authority to commit the ward to inpatient psychiatric treatment without first seeking an inpatient commitment order.

"It is further ordered by the Court that the Guardian file an annual report on the condition of Nadine Chalmers every December throughout the duration of the guardianship.

"It is further ordered by the Court that the outstanding Petitions for Appointment of Conservator, as filed by Sharma Helms and David M. Miles, respectfully, be and are hereby denied.

"It is further ordered by the Court that the costs of this proceeding, including any Court Costs, Guardian ad Litem fees (to be filed) and Attorney Fees ... (to be filed) be taxed against the estate of Nadine Chalmers, an incapacitated person."

On January 6, 2021, Miles filed a petition to remove the administration of the guardianship to the circuit court, pursuant to § 26-2-2, Ala. Code 1975. That same day, the circuit court entered an order purporting to remove the administration of the guardianship from the probate court to the circuit court. On January 13, 2021, Miles filed a motion to alter, amend, or vacate the judgment of the probate court, asserting that the guardianship proceeding should have been dismissed or

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that Miles should have been appointed as guardian.<sup>1</sup> The deadline for ruling on the motion to alter, amend, or vacate was continued beyond the 90 days set out in Rule 59, Ala. R. Civ. P., by agreement of all the parties. On May 18, 2021, the circuit court entered an order denying the motion. On June 28, 2021, Miles filed a notice of appeal, purporting to challenge the circuit court's order denying his postjudgment motion directed to the December 16, 2020, judgment of the probate court.

#### Discussion

"A court has jurisdiction to determine its own jurisdiction." Jefferson Cnty. Comm'n v. Edwards, 32 So. 3d 572, 583 (Ala. 2009). "When a court determines that it does not have jurisdiction, it has the power to order the case dismissed." Taylor v. Paradise Missionary Baptist Church, 242 So. 3d 979, 1000 (Ala. 2017) (Shaw, J., concurring in the result).

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<sup>1</sup>On January 13, 2021, in the circuit court, an attorney entered a notice of appearance on behalf of Chalmers. Nothing in the record indicates that Chalmers hired this attorney before being adjudicated incapacitated, § 26-2A-102(c), Ala. Code 1975; that the probate court appointed the attorney to represent Chalmers pursuant to § 26-2A-102(b); or that the circuit court had ordered the attorney to appear on behalf of Chalmers.

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In the present case, the probate court entered a judgment on December 16, 2020, establishing a guardianship, appointing Helms as Chalmers's guardian, and denying the petitions seeking the appointment of a conservator for Chalmers. Miles did not appeal that judgment. Instead, Miles filed a petition to remove the administration of the guardianship to the circuit court under § 26-2-2. Section 26-2-2 provides:

"The administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court."

When he sought to remove the administration of the guardianship from the probate court to the circuit court, Miles was not acting in any of the capacities listed in § 26-2-2. Those persons permitted to seek such a removal without assigning any special equity are: (1) the guardian of a

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guardianship, (2) the conservator of a conservatorship, (3) a guardian ad litem, (4) the next friend of a ward, or (5) a person entitled to support out of a ward's estate. The probate court specifically declined to establish a conservatorship for Chalmers. Helms, not Miles, was appointed Chalmers's guardian. Neither an attorney-in-fact nor a health-care proxy is one of the persons identified in § 26-2-2 as being able to remove the administration of a guardianship or conservatorship to a circuit court. The probate court, acting specifically in accordance with the discretion granted to it by § 26-2A-104(b), Ala. Code 1975, chose not to appoint Miles as Chalmers's guardian, despite his presumed priority over other candidates based upon Chalmers's nomination of him in her power of attorney. Rather, for the "good cause" reasons stated in its judgment, the probate court appointed Helms as Chalmers's guardian. And, pursuant to further findings set out in its judgment, the probate court stated that Miles, as Chalmers's attorney-in-fact, was "able to sufficiently manage [Chalmers's] assets accessible to him in order to meet his fiduciary duty to [Chalmers]," and, thus, there was no need to establish a conservatorship for Chalmers.

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"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 courts were unknown to the common law, Gilbreath v. Wallace, 292 Ala. 267, 270, 292 So. 2d 651, 654 (1974), and, in Alabama, statutes in derogation of or modifying the common law are strictly construed. Baldwin v. Branch, 888 So. 2d 482, 484-85 (Ala. 2004). In the present case, Miles was not one of the persons set out in § 26-2-2 as being capable of removing the administration of a guardianship or conservatorship to the circuit court; therefore, the removal was ineffective and the circuit court never obtained subject-matter jurisdiction.

Rush v. Rush, 163 So. 3d 362 (Ala. Civ. App. 2014), is instructive. In Rush, a ward's son appealed from a judgment of a circuit court entered following the purported removal of the proceedings from a probate court to

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the circuit court after the probate court had entered an order appointing only a temporary guardian and conservator for the ward, who was the son's mother. The Court of Civil Appeals held that the removal was premature and, therefore, improper under § 26-2-2, explaining:

"Although [the son] does not challenge the removal of the case from the probate court to the circuit court, we must address the issue whether the circuit court had subject-matter jurisdiction to enter the judgment. 'Lack of subject matter jurisdiction may not be waived by the parties and it is the duty of an appellate court to consider lack of subject matter jurisdiction ex mero motu.' Ex parte Smith, 438 So. 2d 766, 768 (Ala.1983) (citing City of Huntsville v. Miller, 271 Ala. 687, 127 So. 2d 606 (1958), and Payne v. Department of Indus. Relations, 423 So. 2d 231 (Ala. Civ. App.1982)). '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.' Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008) (citing Hunt Transition & Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 274 (Ala. 2000)). 'Matters of subject-matter jurisdiction are subject to de novo review.' DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011) (citing Solomon v. Liberty Nat'l Life Ins. Co., 953 So. 2d 1211, 1218 (Ala. 2006)).

"Probate courts have general and original jurisdiction over petitions for the appointment of guardians and conservators for incapacitated persons. § 12-13-1(b)(6) and (b)(7), Ala. Code 1975. A circuit court gains jurisdiction over conservatorship and/or guardianship proceedings through the

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removal of the proceedings from a probate court pursuant to § 26-2-2, Ala. Code 1975:

"The administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court.'

"A circuit court lacks subject-matter jurisdiction to remove a proceeding before the probate court has acted upon the petition for letters of guardianship or conservatorship. Ex parte Casey, 88 So. 3d 822, 829 (Ala. 2012); Ex parte Coffee Cnty. Dep't of Human Res., 771 So. 2d 485, 487 (Ala. Civ. App. 2000) (holding that the circuit court prematurely removed conservatorship proceeding). Section 26-2-2 permits the removal of the 'administration or conduct of any guardianship or conservatorship.' There is no 'administration or conduct' of a guardianship or conservatorship to remove from the probate court to the circuit court when no guardianship or

conservatorship has been created for the incapacitated person. Ex parte Casey, 88 So. 3d at 830.

"The supreme court and this court have recognized that the language of § 26-2-2 has a 'marked similarity' to the language of § 12-11-41, Ala. Code 1975, governing the removal of the administration of a decedent's estate from the probate court to the circuit court. Beam v. Taylor, 149 So. 3d 571, 580 (Ala. 2014); Ex parte Casey, 88 So. 3d at 828; see also Ex parte Coffee Cnty. Dep't of Human Res., supra. In Allen v. Estate of Juddine, 60 So. 3d 852, 855 (Ala. 2010), the supreme court stated that '[t]he administration of the estate was initiated by the probate court when it granted ... letters of administration.' In DuBose v. Weaver, supra, the probate court had not admitted the will to probate and had not issued letters testamentary. '[W]here no letters of general administration have issued from the probate court and where the decedent's will has not yet been admitted to probate, the circuit court "is without jurisdiction to make an order" removing the administration of the estate from the probate court to the circuit court.' 68 So. 3d at 822 (quoting Ex parte Pettus, 245 Ala. 349, 351, 17 So. 2d 409, 410-11 (1944)). Similarly, the probate court in this case had not issued letters of conservatorship or guardianship to anyone at the time the proceeding was purportedly removed to the circuit court. Therefore, because no guardianship or conservatorship had been established by the probate court, there was no 'administration or conduct' of a guardianship of [the mother] or of a conservatorship of her estate to be removed under § 26-2-2."

Rush, 163 So. 3d at 368-69 (footnote omitted).



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In Beam v. Taylor, 149 So. 3d 571 (Ala. 2014), David Karn, the special administrator ad colligendum of a decedent's estate, filed a petition to remove the administration of the conservatorship that had been established for the decedent before his death from a probate court to a circuit court. This Court determined that, because a special administrator ad colligendum did not fall within the category of persons who may file a petition for removal pursuant to § 26-2-2, the circuit court had not obtained subject-matter jurisdiction over the conservatorship estate.

"Section 26-2-2 provides that a petition for removal, without assigning any special equity, may be filed only by 'the guardian or conservator ... or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward.' Karn did not assign any special equity in his petition for removal. He simply stated that, in his opinion, 'the conservatorship can best be administered in the Circuit Court of Chilton County under the Rules of Civil Procedure.' This Court has held that a petition for removal filed in and granted by the circuit court was insufficient to convey subject-matter jurisdiction to the circuit court when the petitioner did not fall within the category of parties set forth in § 26-2-2 and no special equity had been assigned in the petition for removal. See Smith v. Smith, 248 Ala. 49, 51, 26 So. 2d 571, 571 (1946) (holding that the next of kin of a deceased ward did not have the absolute right to remove the administration of a guardianship proceeding from the probate court to the circuit court because the predecessor statute to § 26-2-2 did not include next of kin in the list of persons granted that absolute

right). Thus we conclude that Karn's petition for removal, even if it had been properly filed in and granted by the circuit court, was insufficient to support removal of the conservatorship to the circuit court because Karn did not assign any special equity to support the petition for removal and he was not included in the list of persons in § 26-2-2 who may petition for the removal of the conservatorship proceeding without assigning special equity."

Beam, 149 So. 3d at 576-77. Like the circuit courts in Rush and Bean, the circuit court in this case never obtained jurisdiction over the administration of Chalmers's guardianship because, under §26-2-2, Miles was not authorized to seek removal of the administration of the guardianship from the probate court to the circuit court.

### Conclusion

In the present case, the probate court entered its order on December 16, 2020. The circuit court's order granting Miles's petition to remove the administration of the guardianship was void because Miles was not a person entitled to remove the administration of guardianship under § 26-2-2.<sup>2</sup> Likewise, the circuit court's denial of Miles's motion to alter, amend,

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<sup>2</sup>Additionally, we note that, in his motion to alter, amend, or vacate the probate court's judgment that he filed in the circuit court, Miles essentially sought review of the probate court's judgment by asserting

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or vacate the probate court's judgment was void. The circuit court never obtained subject-matter jurisdiction over the administration of the guardianship, and any orders entered by the circuit court are void and therefore due to be vacated. Because a void order will not support an appeal, we dismiss the appeal and order the circuit court to vacate any orders it has entered. Because the circuit court never obtained jurisdiction over the administration of the guardianship, jurisdiction remains in the probate court.

APPEAL DISMISSED.

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

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that the guardianship proceeding should have been dismissed or that he should have been appointed as Chalmers's guardian. On appeal, he asserts, alternatively, that the guardianship should not have been created or that he should have been appointed as Chalmers's guardian, thus, essentially, challenging the propriety of the probate court's judgment. Section 26-2-2 provides for the removal of the "administration or conduct" of a guardianship or conservatorship from a probate court to a circuit court; it does not provide for removal to review whether a guardianship or conservatorship should have been created. Review of that issue is proper via an appeal of the probate court's judgment creating the guardianship or conservatorship. See Meadows v. Meadows, 603 So. 2d 884, 884-85 (Ala. 1992) (citing § 12-22-20, Ala. Code 1975).