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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

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SC-2022-0880

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**Daniel Barefoot, as a personal representative and legatee of the  
Estate of Danny Bryant Barefoot, deceased**

v.

**Tiffiney J. Cole and Laney Hatcher, as personal representatives  
of the Estate of Donna Viola Barefoot, deceased**

**Appeal from Houston Probate Court  
(2021-411)**

STEWART, Justice.

Daniel Barefoot, as a personal representative and legatee of the estate of Danny Bryant Barefoot, deceased, appeals from an order of the Houston Probate Court ("the probate court") determining that the estate of Donna Viola Barefoot is entitled to a share of Danny's estate on the basis that Donna was an omitted spouse under § 43-8-90, Ala. Code 1975. Because the appeal is from a nonfinal order, this Court must dismiss the appeal for lack of jurisdiction. See Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 362 (Ala. 2004).

#### Background

Because this Court is unable to reach the merits of this appeal, only a brief recitation of the facts and procedural history is necessary. Danny executed a will on August 13, 2012, while married to Merita Hall Barefoot. In the will, other than a specific bequest to his and Merita's son, Daniel, Danny devised his residuary estate to Merita. Danny specified that, if Merita predeceased him, his estate would be shared jointly in equal shares by Daniel and Marcie Jenkins, whom he identified in the will as his stepdaughter. Danny also named Daniel and Marcie as corepresentatives of his estate. Merita died on September 6, 2014.

On January 21, 2018, Danny married Donna. Danny and Donna did not execute a prenuptial agreement, and Danny did not execute a new will or a codicil to his previous will to include any testamentary dispositions to Donna. Danny died on September 5, 2021. Twelve days later, on September 17, 2021, Donna died.<sup>1</sup>

On September 30, 2021, Marcie and Daniel filed in the probate court a petition seeking to probate Danny's will and a petition for letters testamentary. In their petition, Marcie and Daniel listed only themselves as Danny's surviving heirs. The probate court, noting that Danny's death certificate listed Donna as his spouse at the time of his death, requested additional information and received a copy of Donna's obituary. Thereafter, the probate court admitted Danny's will to probate and issued letters testamentary to Marcie and Daniel (referred to collectively as "the representatives of Danny's estate").

Meanwhile, Donna's children, Tiffiney J. Cole and Laney Hatcher, filed a petition seeking to administer Donna's estate, and the probate court issued letters testamentary to them on November 8, 2021. On

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<sup>1</sup>The record indicates that both Danny and Donna had contracted the COVID-19 virus shortly before their deaths.

January 27, 2022, Tiffiney and Laney (referred to collectively as "the representatives of Donna's estate") filed claims against Danny's estate for Donna's elective share, homestead allowance, exempt-property allowance, and family allowance and Donna's share as an omitted spouse under § 43-8-90. The representatives of Danny's estate filed a response in opposition to the claims asserted by the representatives of Donna's estate and argued, among other things, that the asserted claims were personal to Donna and had abated upon Donna's death.

The probate court held a hearing on May 2, 2022, at which it heard arguments on the pending motions and took testimony related to the merits of the omitted-spouse claim. At the beginning of the hearing, the representatives of Donna's estate voluntarily dismissed the claims for Donna's elective share and allowances. On August 10, 2022, the probate court entered an order in which it determined that Donna's estate was entitled to a share of Danny's estate on the basis that Donna was an omitted spouse. The probate court also ordered the representatives of Danny's estate to file, within 30 days, an inventory and accounting, with appraisals of real and personal property. Daniel, as a personal

representative and legatee of Danny's estate, filed a notice of appeal to this Court.<sup>2</sup>

### Discussion

At the outset, although the issue has not been addressed by the parties, we must determine whether this Court has jurisdiction to consider the appeal. See Fuller v. Birmingham-Jefferson Cnty. Transit Auth., 147 So. 3d 907, 911 (Ala. 2013)("[J]urisdictional matters, such as whether an order is final so as to support an appeal, are of such importance that an appellate court may take notice of them ex mero motu.>").

The appeal is taken from an order determining that Donna's estate is entitled to an omitted spouse's share of Danny's estate under § 43-8-90 and ordering the representatives of Danny's estate to submit an inventory and accounting. The order does not resolve all the claims of the parties, and it specifically contemplates future proceedings. The order is, therefore, indisputably nonfinal. See Hamilton v. Connally, 959 So. 2d 640, 642 (Ala. 2006) (explaining that a final judgment must dispose of all

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<sup>2</sup>Marcie is not listed on the notice of appeal.

claims as to all parties and "must put an end to the proceedings and leave nothing for further adjudication").

In his notice of appeal to this Court, Daniel acknowledges that the order from which he has appealed does not constitute a final judgment. Daniel, however, contends that § 12-22-21(4), Ala. Code 1975, provides authority for this Court to review the probate court's order finding that Donna's estate was entitled to an omitted spouse's share of Danny's estate. Section 12-22-21(4) permits an appeal from a probate-court order "[b]y a legatee or person entitled to distribution, on the decision of the [probate] court, in proceedings instituted to compel the payment of a legacy or distributive share, at any time within 42 days after such decision."

In Saylor v. Saylor, 169 So. 3d 998 (Ala. 2014) (plurality opinion), this Court considered, and rejected, an argument similar to the argument now asserted by Daniel. In Saylor, a widow petitioned the probate court for an elective share of her deceased husband's estate. The probate court in Saylor entered an order allowing the widow an elective share of the estate but did not adjudicate the amount of that elective share. The administration of the estate was then removed to the circuit court, and

that court entered a summary judgment denying the widow's claim for an elective share. On appeal, the widow argued that the probate court's order "granting" her petition for an elective share was an appealable order under § 12-22-21(4) and that the failure to appeal from the probate court's order had resulted in that order becoming the law of the case. This Court rejected that argument, holding that, because the order in question had not determined the monetary amount of the elective share, it was not a "decision" of the probate court "compel[ling] the payment of a legacy or distributive share" as contemplated by § 12-22-21(4). We explained:

"Assuming for the sake of argument that § 12-22-21(4) applies to a surviving spouse's claim for an 'elective share,' the condition otherwise described in that statute is not met here. The probate court entered two preliminary orders, an order granting an extension of time for [the widow] to petition for an elective share and an order stating that [the widow] was entitled to an elective share. As noted, the latter order did not adjudicate the amount of that elective share ....

"....

"But neither of the probate court's February 2012 orders determined the share, if any, to which [the widow] might be entitled. That is, they did not resolve [the widow's] claim for an elective share. Neither order compelled any payment, or denied any claim for payment, of any portion of the estate. Neither order represents 'the decision' of the probate court 'in [a] proceeding[ ] instituted to compel the payment of a legacy

or distributive share' contemplated by the statute. Neither order was appealable as 'the decision' of the probate court in the 'proceeding[ ] instituted to compel the payment of a legacy or distributive share' under § 12-22-21(4). See, e.g., Dempsey v. Dempsey, 899 So. 2d 1272, 1273 (Fla. Dist. Ct. App. 2005) (holding that an order determining entitlement to an elective share, but not the amount of the share, is a 'nonfinal and nonappealable' order). See generally Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 361-62 (Ala. 2004) (holding that, where the amount of a monetary claim is at issue, a judgment that adjudicates liability, but not the amount of the claim, is not a final judgment); Banyan Corp. v. Leithead, 41 So. 3d 51, 54 (Ala. 2009) (noting that an appealable judgment is one that finally and conclusively adjudicates the substantive rights of the parties). As a result, the February orders were not appealable and, indeed, remained subject to revision by the probate court or, as in this case, by the circuit court upon proper removal of the administration of the estate."

169 So. 3d at 1003-04.

Likewise, in this case, although the probate court concluded that Donna's estate was entitled to an omitted spouse's share of Danny's estate, it has not determined the monetary amount of that share. Accordingly, as in Saylor, that claim has not been adjudicated, and, thus, the probate court's order did not constitute a "decision" in a proceeding "instituted to compel the payment of a legacy or distributive share" that would be appealable under § 12-22-21(4). Accordingly, the appeal in this case is not taken from a final judgment and must, therefore, be dismissed.



See Alfa Mut. Ins. Co. v. Bone, 13 So. 3d 369, 374 (Ala. 2009) (holding that an appeal from a nonfinal judgment must be dismissed), and Dzwonkowski, 892 So. 2d at 362 (explaining that this Court is required to ex mero motu dismiss an appeal from a nonfinal order).

Conclusion

Because the order from which Daniel has appealed is not a final judgment, the appeal is dismissed.

APPEAL DISMISSED.

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