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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2023-0182

**Elizabeth Cummings Hill, as attorney in fact for Brenda
Cummings**

v.

Douglas C. Martinson II and Caleb Ballew

**Appeal from Madison Probate Court
(No. 75073)**

MITCHELL, Justice.

Douglas C. Martinson II and Caleb Ballew ("the lawyers") represented Lesley Hatch in the Madison Probate Court in a dispute over the guardianship of her aunt, Brenda Cummings. During the proceedings, the lawyers withdrew from representing Hatch and filed a claim for attorney fees to be paid from Cummings's estate. The probate court entered a judgment on the merits of the underlying case and denied the lawyers' claim for fees. Over 30 days later, the lawyers moved the probate court to reconsider their claim. After a hearing, the probate court reversed course and entered an order awarding them their fees.

Elizabeth Cummings Hill, acting on behalf of Cummings under a power of attorney, has appealed. She argues that the probate court did not have jurisdiction to grant the lawyers' motion because it was untimely. We agree and dismiss the appeal, with instructions to vacate the order awarding attorney fees.

Facts and Procedural History

In April 2022, Hatch filed an emergency petition for letters of guardianship over Cummings. Hatch alleged that Cummings's daughter, Hill, whom Cummings has previously granted power of attorney, had sent Cummings to a nursing home in Mexico against Cummings's wishes.

The probate court granted Hatch's petition, naming her temporary guardian of Cummings.

Hatch then filed a petition for permanent letters of guardianship and conservatorship over Cummings. Hill filed a counterpetition likewise seeking letters of guardianship and conservatorship. Eventually, Cummings returned to Alabama. The parties then reached an agreement that she would remain here. They also agreed that Chanda Crutcher would be appointed as a temporary guardian of Cummings. But their petitions for permanent letters of guardianship and conservatorship remained before the probate court.

On August 19, 2022, Hill filed a motion to extend Crutcher's temporary guardianship. That same day, the lawyers filed a motion to withdraw from representing Hatch, which the probate court granted. They also filed a claim seeking attorney fees from Cummings's estate.

About a month later, the probate court held a hearing on Hatch's and Hill's petitions. On September 28, the probate court entered a judgment dismissing both petitions. In a reasoned order, the probate court found that Cummings did not require a guardian or conservator and that Hill held a general durable power of attorney. Therefore, it said,

"the petition and counter-petition in this matter are due to be, and they are hereby, dismissed."

In the same order, the probate court "note[d] that a claim was filed by [the lawyers] ... on or about September 1, 2022, seeking attorney fees, costs, and expenses in connection with [their] representation of [Hatch]." The court explained that the "claim sought to have those expenses taxed against the estate of [Cummings]." It then denied the lawyers' claim, along with "[a]ll other claims for relief."

On November 3, the lawyers filed a "motion to reconsider" asking the probate court "to reconsider the claim filed by [them] for reimbursement of attorneys fees from the Estate of [Cummings]." Hill filed a response arguing that the motion was untimely because it was filed more than 30 days after the entry of the probate court's September 28 order. After a hearing, the probate court entered an order awarding the lawyers' fees. Hill appealed.

Standard of Review

Our review of a probate court's jurisdiction is de novo. State Dep't of Revenue v. Arnold, 909 So. 2d 192, 193 (Ala. 2005). We likewise review

de novo a grant or denial of a claim for attorney fees. SMM Gulf Coast, LLC v. Dade Cap. Corp., 311 So. 3d 736, 741 (Ala. 2020).

Analysis

Hill argues that the probate court's initial order denying the lawyers' claim for attorney fees was a final judgment on that issue. Accordingly, she says, the lawyers' postjudgment motion seeking attorney fees was a motion to alter, amend, or vacate the judgment that, under Rule 59(e), Ala. R. Civ. P., should have been filed within 30 days of the entry of the judgment. She contends that, because the lawyers waited more than 30 days to file, the probate court did not have jurisdiction to grant their motion. We agree.

To begin, the probate court's order denying the lawyers' claim for attorney fees was a final judgment. "'A final judgment is an order "that conclusively determines the issues before the court and ascertains and declares the rights of the parties involved.'" George v. Sims, 888 So. 2d 1224, 1226-27 (Ala. 2004) (citations omitted). "'It is well established that an order awarding [or denying] attorney fees in relation to an underlying case is, itself, an appealable [final] judgment.'" Hutchinson v. State, 66 So. 3d 220, 230 (Ala. 2010) (citation omitted). Here, the lawyers filed a

claim for attorney fees while Hatch's and Hill's petitions were before the probate court. Through a reasoned order, the probate court then entered a final judgment dismissing the petitions and denying "[a]ll other claims for relief." The court also stated that the lawyers' claim "seeking attorney fees, costs and expenses in connection with [their] representation" of Hatch "is due to be, and is hereby, denied." By expressly denying the lawyers' claim for attorney fees as part of its order on the merits, the court's denial was itself a final judgment.

In this light, the lawyers' motion asking the probate court to grant "the claim filed by [the lawyers] for reimbursement of attorneys fees from the Estate of [Cummings]" -- which the probate court had already denied -- was plainly a "motion to alter, amend, or vacate the judgment" under Rule 59(e). See Ex parte Alfa Mut. Gen. Ins. Co., 684 So. 2d 1281, 1282 (Ala. 1996) ("[T]his Court looks to the essence of a motion, rather than its title, to determine how that motion is to be considered" under the Alabama Rules of Civil Procedure.). The lawyers dispute this by pointing out that "a trial court has jurisdiction to award attorney fees and costs after entering a final judgment because such requests are collateral to the merits." SMM, 311 So. 3d at 743. Accordingly, they say, "parties who

petition for attorney fees are not required to make such requests by [a] Rule 59(e) ... motion" and, therefore, "the 30-day ... time limit ... is inapplicable to requests and orders for attorney fees." The lawyers' brief at 8.

This argument is off base. For one, it misapplies SMM by ignoring the fact that a court's judgment on attorney fees is a final judgment like any other. See Hutchinson, 66 So. 3d at 230 ("[A]ttorney-fee matters are separate and distinct from matters going to the merits of a dispute and ... an appeal may be taken from a final judgment as to either aspect of a case." (citations omitted)). It also discounts the fact that a trial court's ongoing jurisdiction over attorney fees derives from -- and depends on -- the collateral relationship of those fees to the final judgment on the merits. SMM, 311 So. 3d at 743. For example, in SMM, there had been no judgment entered regarding attorney fees -- the only judgment under consideration was on the merits. See SMM, 311 So. 3d at 743. Accordingly, the postjudgment motion for fees in SMM was collateral to the judgment on the merits. Id. Here, by contrast, the lawyers' postjudgment "motion to reconsider" sought to alter, amend, or vacate a final judgment denying attorney fees. Their motion was not

collateral to that judgment and, thus, must be treated according to Rule 59(e). See Jim Parker Bldg. Co. v. G & S Glass & Supply Co., 69 So. 3d 124, 128 n.2 (Ala. 2011) (explaining that the Court would "consider G&S's motion as a ... Rule 59(e) motion" even though "[t]he Alabama Rules of Civil Procedure do not specifically provide for a 'motion to reconsider'" because "[i]t is clear from the substance of G & S's motion ... that [it] is a ... motion to alter, amend, or vacate the trial court's order").

Under Rule 59(e), "[a] motion to alter, amend, or vacate the judgment shall be filed not later than thirty (30) days after entry of the judgment." Without a timely motion, a court has "no jurisdiction to modify or amend [its] final order more than 30 days after the [final order] has been entered, except to correct clerical errors." George, 888 So. 2d at 1227. To invoke the probate court's jurisdiction here, the lawyers were required to file the motion within 30 days of the entry of judgment -- that is, by October 28. Because they did not file their motion until November 3, the probate court no longer had jurisdiction to enter an order altering, amending, or vacating its original judgment denying the lawyers' claim for attorney fees. Therefore, the order underlying this appeal is void. See

Riley v. Hughes, 17 So. 3d 643, 649 (Ala. 2009) ("Any action taken by a trial court without subject-matter jurisdiction is void.").

Conclusion

The lawyers' postjudgment motion was untimely; thus, the probate court's order granting that motion was void. "Because a void order or judgment will not support an appeal," we dismiss the appeal and instruct the probate court to vacate the order awarding the lawyers' fees. Gallagher Bassett Servs., Inc. v. Phillips, 991 So. 2d 697, 701 (Ala. 2008).

APPEAL DISMISSED WITH INSTRUCTIONS.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.