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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2023-0264

Arthur Alexander Smith, individually and as the personal representative of the Estate of Sammie Wells Smith, deceased

v.

Michael Smith

**Appeal from Talladega Circuit Court
(CV-19-900281)**

WISE, Justice.

The defendant below, Arthur Alexander Smith, individually and as the personal representative of the estate of Sammie Wells Smith, deceased, appeals from a judgment that the Talladega Circuit Court ("the trial court") entered in favor of Michael Smith, the plaintiff below. We reverse the trial court's judgment and remand the case with instructions.

Facts and Procedural History

Sammie had eight children, one of whom predeceased her. Her remaining living children are Michael, Arthur, Larry Smith, Charles Smith, Brenda Smith Watson, Sarah Smith, and Elizabeth Smith. During her lifetime, Sammie owned two tracts of land in Talladega County ("the property"), and her house was located on one of those tracts of land.

On September 13, 2013, Sammie executed a general warranty deed in which she conveyed the property to Michael and Watson but reserved a life estate for herself. That deed was recorded in the Talladega Probate Court on September 13, 2013.

On October 12, 2015, Michael and Watson executed a "Corrective Deed Jointly for Life with Remainder to Survivor," in which they created

a joint tenancy with rights of survivorship, subject to Sammie's life estate.

On October 21, 2015, Sammie executed another deed in which she conveyed her life estate to Michael. On that same date, Watson executed a "Life Estate Deed," in which she conveyed a life estate in the property to Michael. Both of those deeds were recorded in the Talladega Probate Court on October 21, 2015.

Sammie died on February 15, 2018. Arthur was living in Sammie's house at the time of her death, and he remained in her house after her death. Subsequently, Michael and Watson commenced an ejectment action in the trial court, seeking to remove Arthur from the property ("the ejectment action"). The trial court conducted a bench trial in the ejectment action. During the bench trial, Michael and Watson presented evidence indicating that Sammie had executed the September 13, 2013, deed conveying the property to them and retaining a life estate for herself; that Sammie had subsequently executed the October 21, 2015, deed in which she relinquished her life estate; and that they were the exclusive owners of the property. They also testified that Arthur was currently living on the property and that they wanted to eject Arthur

from the property. However, Larry, Elizabeth, Charles, and Sarah testified that the signatures on the September 13, 2013, and October 21, 2015, deeds were not Sammie's signature. Testimony was also presented indicating that Sammie had repeatedly stated that she wanted the property to be divided equally among her seven living children; that Sammie had wanted the property to be available if any of those children needed somewhere to stay; and that Sammie wanted Arthur to be able to remain in the house. At the conclusion of the bench trial, the trial court stated that it was continuing the case to give the parties "an opportunity to issue the appropriate subpoena for whomever they think is responsible for this document to put to bed once and for all the issue of the signature." Ultimately, the trial court held that Michael and Watson were not entitled to relief and denied their ejectment petition.

On June 11, 2019, Michael commenced the present action in the trial court. In the style of the case, Michael listed the defendants as "Arthur Smith, Estate of Sammie Wells Smith abc, designating any and all legal entities, and/or persons who or which claim an interest in" the property. In count one of the complaint, Michael sought a judgment

declaring who owns the property. In count two of the complaint, Michael sought injunctive relief. In that count, he alleged, in pertinent part:

"9. Plaintiff asserts that the Defendants have taken possession of the real property made the basis of this action and have probated the Estate of Sammie Wells Smith in Talladega County Probate Court and have asserted that the said property is an asset of the said estate."

On February 4, 2020, Arthur filed a pro se answer denying the allegations in the complaint.

On July 6, 2021, the trial court conducted a bench trial. Arthur did not appear for the trial. However, the trial court proceeded to trial without Arthur, stating:

"And before we get started, the Court would note that the defendant, Arthur Smith, after receiving notice of said hearing, is not here and present without a motion to continue and/or any other call or otherwise. It would be the intention of the Court to move forward on the merits of the case."

On July 19, 2022, the trial court entered a default judgment, in which it stated, in pertinent part:

"This matter coming on to be heard on the 6th day of July 2021 with the Plaintiff Michael A. Smith who appeared and was represented by counsel, Clarence Dortch, III, Esq. Defendants, Arthur Smith and the representative of Estate of Sammie Smith who is also Arthur Smith, failed to appear. The case was called after giving the Defendants 30 minutes to arrive and testimony was taken from W.T. Campbell, Esq.,

Michael A. Smith and Brenda Smith Watson. W.T. Campbell testified that Ms. Sammie W. Smith had been his client for several years prior to her death in which he represented her in probate and real estate matters. He testified that on September 13, 2013 at the request of Sammie W. Smith he prepared a Life Estate deed in which Ms. Sammie W. Smith conveyed her interest in two parcels of land ... to the Plaintiff Michael A. Smith and his sister Brenda Smith Watson but retained a life estate in the subject property. On October 21, 2015, Sammie Smith conveyed her life estate interest in the subject properties to Michael Smith, as did Brenda Smith Watson. Both Sammie Smith and Brenda Smith Watson conveyed their interest in the subject property to Michael Smith. Mr. Campbell further testified that in his opinion Sammie W. Smith was competent to convey her interest and was not unduly influenced to do so. Plaintiff Michael A. Smith testified that he was one of seven (7) whose mother was Sammie W. Smith. Plaintiff has paid all Talladega County Alabama ad valorem taxes regarding the property made the basis of this lawsuit and while testifying offered into evidence the tax receipts reflecting these payments. He testified that during his youth he was injured by an accidental shotgun blast and was extremely close to his mother Sammie W. Smith. He testified that he believed ... that he was selected by his Mother as the Grantee of the real estate based upon his injury and his care for his mother during and after his period of service in the United States Army. His testimony was corroborated by the testimony of his sister Brenda Smith Watson."

The trial court went on to find:

"Plaintiff Michael Smith is the title owner as Sammie W. Smith and Brenda Smith Watson conveyed their interest in the subject real estate by and through Life Estate and Warranty Deeds prepared by W.T. Campbell, Esq. and recorded in the Talladega County Probate Court. The Court finds that the said Deeds were properly prepared, executed,

recorded, and delivered and the Court finds that the consideration for the deed[s] was adequate and that the deed[s] [were] properly delivered after having been recorded.

"The Court awards possession of the subject real property solely to Plaintiff Michael A. Smith. Defendants Arthur Smith and the Estate of Sammie W. Smith are divested of any interest in the property made the basis of this action. Defendants are hereby ejected from the real property made the basis of this action and are granted thirty (30) days from the date of this Order to vacate the real property. If after thirty (30) days from the date of this Order, the Defendants have not vacated the Plaintiff is by this Order granted a Writ of Assistance."

On August 1, 2022, counsel for Arthur filed a motion to set aside the default judgment, in which he asserted that the present action was barred by the doctrine of res judicata. Michael filed an objection to the motion, and the trial court conducted a hearing on the motion. Although the trial court purported to enter an order denying the motion to set aside the default judgment, that motion was actually denied by operation of law. This appeal followed.

Discussion

In the style of his complaint, Michael named Arthur, Sammie's estate, and fictitiously named parties as defendants in the case.¹ In the

¹Michael did not substitute any named parties for the fictitiously named parties.

factual-background section of the declaratory-judgment count, Michael stated:

"Defendant Estate of Sammie Wells Smith of Talladega County, Alabama ... is an Intestate Estate filed in Talladega County whose heirs are upon information and belief Larry Smith, Charles Smith, Brenda Watson, Arthur Smith, Sarah Smith, Elizabeth Smith, and the Plaintiff Michael Smith."

However, he did not name Larry, Charles, Watson, Sarah, or Elizabeth (collectively referred to as "the remaining heirs") as parties to the action.

On appeal, Arthur argues that the remaining heirs were indispensable parties and that they were not properly served with notice of this action. Arthur raises this argument for the first time on appeal.

"'However, failure of the plaintiff or the trial court to add a necessary and indispensable party, and of the defendant to raise the absence of such party in his or her pleadings, does not necessarily dispose of the issue. This defect can be raised for the first time on appeal by the parties or by the appellate court ex mero motu. Mead Corp. v. [City of] Birmingham, 350 So. 2d 419 (Ala. 1977); Davis v. Burnette, 341 So. 2d 118 (Ala. 1976).'

"J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834, 850 (Ala. 1981). See also Miller v. City of Birmingham, 235 So. 3d 220, 230 (Ala. 2017)(noting that the failure to join an indispensable party can be raised by a court on its own motion but explaining that the absence of an indispensable party does not deprive a circuit court of subject-matter jurisdiction); and [City of Gadsden v.] Boman, 104 So. 3d [882,] 887 [(Ala. 2012)] ('Although no one has argued on appeal that a necessary party

was not joined below, "this Court is entitled to raise the absence of a necessary party ex mero motu." Chicago Title Ins. Co. v. American Guarantee & Liab. Ins. Co., 892 So. 2d 369, 371 (Ala. 2004).")"

Capitol Farmers Mkt., Inc. v. Delongchamp, 320 So. 3d 574, 579 (Ala. 2020).

Rule 19, Ala. R. Civ. P., provides, in pertinent part:

"(a) Persons to Be Joined If Feasible. A person who is subject to jurisdiction of the court shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

"(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be

prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

This Court has explained:

"In Holland v. City of Alabaster, 566 So. 2d 224, 226 (Ala. 1990), this Court explained the process provided in Rule 19:

"Rule 19, [Ala.] R. Civ. P., provides a two-step process for the trial court to follow in determining whether a party is necessary or indispensable. Ross v. Luton, 456 So. 2d 249, 256 (Ala. 1984), citing Note, Rule 19 in Alabama, 33 Ala. L. Rev. 439, 446 (1982). First, the court must determine whether the absentee is one who should be joined if feasible under subdivision (a). If the court determines that the absentee should be joined but cannot be made a party, the provisions of [subdivision] (b) are used to determine whether an action can proceed in the absence of such a person. Loving v. Wilson, 494 So. 2d 68 (Ala. 1986); Ross v. Luton, 456 So. 2d 249 (Ala. 1984). It is the plaintiff's duty under this rule to join as a party anyone required to be joined. J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834 (Ala. 1981).'

"In City of Gadsden v. Boman, 104 So. 3d 882, 887 (Ala. 2012), we stated:

"The purposes of Rule 19 "include the promotion of judicial efficiency and the final determination of

litigation by including all parties directly interested in the controversy." Byrd Cos. v. Smith, 591 So. 2d 844, 846 (Ala. 1991).'"

Capitol Farmers Mkt., 320 So. 3d at 578-79.

"[I]n Winn v. Fitzwater, 151 Ala. 171, 179, 44 So. 97, 100 [(1907)], it was said:

"The rule ... seems to be inflexible that all persons who have a material interest in the litigation, or who are legally or beneficially interested in the subject-matter of the suit, and whose rights or interests are sought to be concluded thereby, are necessary parties. Perkins v. Brierfield I. & C. Co., supra [77 Ala. 403 (1884)]; McKay v. Broad, 70 Ala. [377 (1881)]; Smith v. Murphy, supra [58 Ala. 630 (1877)]; Story's Eq. Pl. § 72; 3 Mayfield's Dig. pp. 254-256.'

"And this court in Jacobs v. Murphy, 245 Ala. 260, 263, 16 So. 2d 859, 862 [(1944)], observed that 'in all suits in equity respecting the lands of decedent his heirs at law are necessary parties. ... Carwile v. Crump, 165 Ala. 206, 51 So. 744 [(1910)].' See also Box v. Box, 253 Ala. 297, 45 So. 2d 157 [(1950)]; Williams v. Yates, 229 Ala. 437, 157 So. 867 [(1934)]; O'Rear v. O'Rear, 219 Ala. 419, 122 So. 645 [(1929)]."

Leigeber v. Scott, 263 Ala. 507, 508, 83 So. 2d 246, 247 (1955).

In this case, Michael argued that he owned the property pursuant to deeds that had been executed by Sammie and Watson. He also asserted that Arthur had opened an estate for Sammie and that Arthur had claimed that the property was an asset of Sammie's intestate estate.

The remaining heirs would have an interest in the determination of whether the property belonged to Michael or whether that property was part of Sammie's estate. In fact, § 43-2-830(a), Ala. Code 1975, provides:

"Upon the death of a person, decedent's real property devolves to the persons to whom it is devised by decedent's last will ..., or in the absence of testamentary disposition, to decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates."

Thus, the remaining heirs have interests in the property that is the subject of this action. Additionally, the absence of the remaining heirs would, as a practical matter, impair or impede their ability to protect their interests in the property. See Rule 19(a)(1). Accordingly, the remaining heirs are necessary parties pursuant to Rule 19(a).

However, as was the case in Capitol Farmers Market, it is unclear whether any of the remaining heirs can be made parties to this action because it does not appear that there was any attempt to join the remaining heirs as parties. Accordingly,

"[a]t this time, we do not hold that [the remaining heirs are] indispensable part[ies]; we hold only that [the remaining heirs are] necessary part[ies] that should be joined, if feasible, in accordance with the requirements of Rule 19(a). See J.R. McClenney & Son, Inc. v. Reimer, 435 So. 2d 50, 52 (Ala. 1983) (discussing the conceptual distinction between indispensable parties and necessary parties). 'There is no prescribed

formula to be mechanically applied in every case to determine whether a party is an indispensable party or merely a proper or necessary one. This is a question to be decided in the context of the particular case.' Reimer, 435 So. 2d at 52.

"....

"'[B]ecause there is no indication that [the remaining heirs] "cannot be made [parties]," Rule 19(b), the [circuit] court was not forced to choose between allowing the action to "proceed among the parties before it," id., or dismissing it. Rule 19(a) requires that, once it is determined that a "person needed for just adjudication" has not been joined, "the court shall order that [it] be made a party." ... "The absence of a necessary and indispensable party necessitates the dismissal of the cause without prejudice or a reversal with directions to allow the cause to stand over for amendment." J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834, 851 (Ala. 1981), citing Rogers v. Smith, 287 Ala. 118, 248 So. 2d 713 (1971).'

"Withington v. Cloud], 522 So. 2d [263,] 265 [(Ala. 1988)]; see also [City of Gadsden v.] Boman, 104 So. 3d [882,] 887 [(Ala. 2012)] ('Rule 19(a) is mandatory')."

Capitol Farmers Mkt., 320 So. 3d at 582-83.

Conclusion

For these reasons, we reverse the trial court's judgment and remand this case to the trial court with instructions that that court "join [the remaining heirs] as [parties] to this action, if feasible. See Rule 19(a); [City of Gadsden v.] Boman, 104 So. 3d [882,] 888-89 [(Ala. 2012)]."

Capitol Farmers Mkt., 320 So. 3d at 583. However, if the trial court determines that any of the remaining heirs cannot be made a party to the action, it "should consider the reasons [why any such heir] cannot be joined and decide whether the action should proceed in [any such heir's] absence. See Rule 19(b) and (c). In light of the foregoing, we express no opinion concerning the merits of the arguments made by the parties on appeal." Id.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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