

Cite as 2010 Ark. App. 473

ARKANSAS COURT OF APPEALSDIVISION I
No. CA09-1073J.D. ASHLEY, SR., BY AND
THROUGH CHAROLETTE ASHLEY
AS HIS ATTORNEY-IN-FACT
APPELLANTS

V.

THE J.D. ASHLEY, SR. FAMILY
LIMITED PARTNERSHIP, RICHARD
H. ASHLEY, AND J.D. ASHLEY, JR.
APPELLEES**Opinion Delivered** June 2, 2010APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
NINTH DIVISION [CV-2008-14052]HONORABLE MARY MCGOWAN,
JUDGE

DISMISSED

DAVID M. GLOVER, Judge

In this action for accounting, appellees, the J.D. Ashley, Sr., Family Limited Partnership (the FLP),¹ Richard Ashley, and J.D. Ashley, Jr., were granted summary judgment and appellant, Charolette Ashley, was held in contempt of court. Charolette appeals from both orders. Charolette is the second wife of J.D. Ashley, Sr. Acting pursuant to an instrument entitled “Durable Special Power of Attorney for Health Care and Other Matters” naming her his attorney-in-fact, she sued appellees for an accounting of Ashley Sr.’s

¹The J.D. Ashley, Sr., Family Limited Partnership consisted of J.D. Ashley, Sr., and his four children from his first marriage—Richard H. Ashley, J.D. Ashley, Jr., Melody P. Ashley and Todd H. Ashley. While all were limited partners, J.D. Ashley, Sr., and appellees Richard Ashley and J.D. Ashley, Jr., were also general partners in the family limited partnership.

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ownership interest in the FLP, alleging that appellees had committed constructive fraud and converted partnership funds. The trial court granted appellees' motion for summary judgment, finding that Charolette had no standing to sue for an accounting of business matters. The trial court further found that Charolette was in contempt for failure to follow the trial court's order of March 5, 2009, to make Ashley, Sr. available for a competency exam. Charolette now challenges these determinations on appeal. We dismiss this appeal for the reasons discussed herein.

Charolette's initial brief was filed in December 2009, and both appellees' brief and Charolette's reply brief were filed in February 2010. On March 10, 2010, appellees filed a "Notice of the Fact of Death," stating that J.D. Ashley, Sr. had passed away on March 3, 2010. In response to that notice, Charolette's attorney admitted that Ashley, Sr. had passed away, stating that the causes of action were now the property of the Estate of J.D. Ashley, Sr., but that a personal representative of the estate had not yet been appointed. The above notice and response are pivotal to our disposition of this appeal.

Charolette held a power of attorney for health care and personal matters for Ashley, Sr. It was under this authority that she brought her lawsuit against the FLP and two of her stepsons. However, Charolette's authority under the power of attorney ended at her husband's death. "Any authority to act granted by the power-of-attorney terminated at death. The power of agency ends with death of the principal." *Arkansas Bd. of Embalmers & Funeral Dirs. v. Reddick*, 366 Ark. 89, 94, 233 S.W.3d 639, 643 (2006).

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Arkansas Code Annotated section 16-67-322(a) (Repl. 2005) provides that if all appellants die after the appeal is taken but before judgment is rendered, “the executor or administrator of the last surviving appellant or plaintiff, or the heirs or devisees of the appellant or plaintiff in cases where they would be entitled to bring writs of error or prosecute an appeal, may be substituted for the appellant or plaintiff and the cause shall proceed at their suit.” Charolette’s response admits this was not yet done. Arkansas Code Annotated section 28-48-103 (Repl. 2004) also provides that, for good cause, a special administrator may be appointed pending appointment of an executor or a general administrator to perform duties respecting specific property or to perform particular acts. However, again, as noted in Charolette’s response, an executor, administrator, or a special administrator had not been appointed for the estate at the time of the submission of this case.

We find that Charolette’s authority to act under the power of attorney given to her by her late husband terminated at his death and that no personal representative or executor of the estate has been named and no special administrator has been appointed. Therefore, there is no party in interest left to prosecute this appeal, and it must be dismissed.

Appeal dismissed.

PITTMAN and GLADWIN, JJ., agree.