

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-1230

THE ESTATE OF HELEN VIRGINIA
COAN, ET AL.

APPELLANTS

V.

THE ESTATE OF JOSEPH COAN, JR.,
GEORGETOWN UNIVERSITY, AND
METROPOLITAN OPERA
ASSOCIATION, INC.

APPELLEES

Opinion Delivered May 12, 2010

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT,
[NOS. P-85-21; PR-2005-001-2]

HONORABLE MICHAEL R.
LANDERS, JUDGE

REVERSED AND REMANDED

ROBERT J. GLADWIN, Judge

The estate of Helen Coan and her heirs appeal from a decision of the Ouachita County Circuit Court's probate division refusing to authorize the estate of Joseph Coan, Jr., to transfer funds to Helen's estate. Because we agree with appellants that the circuit court erred, we reverse and remand for further proceedings consistent with this decision.

Helen Coan was disabled and incompetent. Her brother, Joseph Coan, Jr., was guardian of her person and estate, and set up a testamentary trust for her support in his will. His will directed that, upon Helen's death, after some specific bequests, the trust's remainder was to be distributed equally to appellees Metropolitan Opera Association, Inc., and Georgetown University. Joseph died in 1984. Linnie Betts (now deceased), was appointed successor guardian of Helen and her estate. Betts also served as a co-administrator of Joseph's

estate and as a co-trustee of his testamentary trust with John Gaughan III. As co-executors of Joseph's estate, Betts and Gaughan filed a medical malpractice action, which they settled in 1988. As the only wrongful-death beneficiary, Helen was to receive \$98,490.82. Because the settlement agreement required the co-executors not to disclose its terms, the probate court sealed those documents. On September 22, 1992, the probate court entered a decree in the administration of Joseph's estate directing Betts and Gaughan to distribute the wrongful-death proceeds to Betts, as Helen's guardian. They never transferred the proceeds. Betts later testified in this proceeding that the estate's attorney had kept the malpractice documents and that she had been unaware of this directive.

Helen died intestate in 2005, leaving appellants as her heirs. Appellants later sought the removal of Betts as co-administrator of Helen's estate. In 2006, they became aware of Helen's entitlement to the settlement proceeds. In June 2006, Joseph's estate filed a petition to transfer the wrongful-death proceeds to Helen's estate. Metropolitan objected to the transfer on the basis of the ten-year statute of limitations for actions on judgments set forth in Arkansas Code Annotated section 16-56-114 (Repl. 2005). That statute, which was enacted in 1844, provides: "Actions on all judgments and decrees shall be commenced within ten (10) years after cause of action shall accrue, and not afterward." Georgetown took the same position. Metropolitan further pointed out Betts's and Gaughan's conflicts of interest, and asserted that Betts's knowledge of the 1992 order, as Helen's guardian, and that of Robert Laney, as attorney for Helen's guardianship and Joseph's estate, must be imputed to Helen's estate. The

court unsealed the settlement records in August 2006. After Betts died in the fall of 2006, appellants filed a third-party complaint against her estate for breach of fiduciary duty. Both probate cases were consolidated. In 2008, Joseph's estate withdrew its earlier petition to transfer the funds.

In its order denying the petition to transfer the funds because it was time-barred, the circuit court ruled that the 1992 decree was subject to Arkansas Code Annotated section 16-56-114; that it should not be considered as a claim against the estate; and that the doctrine of laches applied. Appellants then brought this appeal.

We review probate cases *de novo* on appeal, and will not reverse the circuit court's findings of fact unless they are clearly erroneous. *Williams v. Hall*, 98 Ark. App. 90, 250 S.W.3d 581 (2007). We review limitations questions, which are questions of law, *de novo*. *Care Manor of Baxter County v. Wheeler*, 2009 Ark. App. 132, ___ S.W.3d ___.

Appellants argue that the circuit court erred in denying their request to transfer Helen's funds for several reasons. Because one of those grounds requires us to reverse, we need not discuss their other arguments. Pointing out that these probate proceedings are still pending, and that no final distribution order has been entered in either estate, appellants argue that the statute of limitations will be tolled until the estates are closed. Because Joseph's estate is still open, we agree that the period of limitations has not yet run. Arkansas Code Annotated section 28-1-115 (Repl. 2008) establishes an extended period during which courts have jurisdiction to modify or vacate orders in probate proceedings. It provides:

(A) For good cause and at any time within the period allowed for appeal after the final termination of the administration of the estate of a decedent or ward, the court may vacate or modify an order or grant a rehearing. However, no such power shall exist as to any order from which an appeal has been taken or to set aside the probate of a will after the time allowed for contest thereof.

(B) No vacation or modification under this section shall affect any act previously done or any right previously acquired in reliance on such order or judgment.

This statute has been interpreted to mean that a probate order may be vacated or modified at any time before a final order is entered. *Snowden v. Riggins*, 70 Ark. App. 1, 13 S.W.3d 598 (2000). The supreme court has stated that the drafters of the probate code knew that there was a need for greater flexibility in regard to the finality of orders in the administration of an estate. *Price v. Price*, 258 Ark. 363, 527 S.W.2d 322 (1975).

This dispute is about whether the proceeds of the wrongful-death settlement are part of Joseph's or Helen's estate. In the exercise of its jurisdiction to administer the estates of decedents, the probate court is authorized to determine what property belongs to the estate. *White v. Toney*, 37 Ark. App. 36, 823 S.W.2d 921 (1992). From the opening of an estate, the personal representative is charged with inventorying and accounting for all of the property of the estate. *Price v. Price*, 253 Ark. 1124, 491 S.W.2d 793 (1973). This duty to account is a continuing one, not subject to a statute of limitations, until he is finally discharged and final distribution approved. *Id.* As long as an administration is pending, it is the duty of the probate court, even in the absence of exceptions, to inquire into an account filed and to require the

personal representative to account for all funds coming into his hands. *Id.*¹ An unsatisfied judgment previously rendered in favor of an estate becomes a part of the assets of the estate so that the heirs become its owners at the close of the administration. *Ward v. Sturdivant*, 96 Ark. 434, 132 S.W. 204 (1910).

Applying these principles, we conclude that the 1992 decree is not yet barred by the statute of limitations because it was entered in a probate proceeding that is still open. The executor of Joseph's estate can, therefore, still take action on that order, and the ten-year statute of limitations will not begin to run until that estate is closed.

Reversed and remanded.

HENRY and BROWN, JJ., agree.

¹The nonclaim statute does not apply to claims of title or for the recovery of property in the hands of the administrator, because such claims are not claims against the estate of the deceased. *See Moore v. Moore*, 21 Ark. App. 165, 731 S.W.2d 215 (1987).