Cite as 2012 Ark. App. 541

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-1246

	Opinion Delivered Ooctober 3, 2012
McVESTING, LLC APPELLANT	APPEAL FROM THE VAN BUREN COUNTY CIRCUIT COURT [NO. CV-09-395]
V.	HONORABLE MICHAEL A. MAGGIO, JUDGE
HEIRS OF MACIE McGOON and CECIL R. CURREN, SR. APPELLEES	REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

The issue in this case concerns whether McVesting, LLC, an Arkansas limited liability company, has standing to bring a petition for the determination of heirship that is provided for in the Arkansas Probate Code. Ark. Code Ann. § 28-53-101 (Repl. 2012). While the probate court found that McVesting lacked standing to do so, we disagree and reverse and remand for further proceedings consistent with this opinion.

McVesting filed in probate court a petition to determine the heirs of Macie McGoon and Cecil R. Curren, Sr., with respect to fifty percent of the reserved mineral rights in a parcel of real property in Van Buren County. McVesting asserted in its pleading that it was the successor in interest to the mineral estate by virtue of its purchase of the interests of Cecil R. Curren, Jr., and Joanne Curren. In response to the petition, Cecil and Joanne filed a motion to dismiss, asserting that McVesting lacked standing to bring the petition. The probate court then entered an order that purported to determine heirship. In response, Cecil

and Joanne filed a motion for reconsideration, and then Cecil, Joanne, and others filed a counterclaim and third-party complaint. In the pleading, Cecil and Joanne asserted that they each owned a twenty-five percent interest in the reserved mineral estate. They further asserted that McVesting and other third-party defendants acquired these interests through fraud and in violation of Arkansas statutes. The probate court ultimately entered an order finding that McVesting lacked standing, and the court granted, *nunc pro tunc* from the date of filing, the motion and amended motion to dismiss and set aside the court's order determining heirship as a nullity. McVesting appeals, asserting that it had standing to bring the petition for heirship.

Before addressing this issue, however, we are obligated to address jurisdictional issues raised by both parties. Appellees urge that we may not hear this appeal from the order granting the motion to dismiss because there remain outstanding claims and thus the order is not a final order. Parties, however, may appeal from probate orders. Ark. Code Ann. § 28-1-116(a); Ark. R. App. P.–Civ. 2(a)(12); *see Helena Regional Medical Center v. Wilson*, 362 Ark. 117, 207 S.W.3d 541 (2005).

Appellees further assert that an error in McVesting's notice of appeal precludes the appeal. McVesting's error was in describing itself in the body of the notice of the appeal as "McVesting, Inc." rather than "McVesting, LLC." A notice of appeal must state the parties appealing, but only substantial compliance is required. *Finney v. Meyer*, 2010 Ark. App. 403; Ark. R. App. P.–Civ. 3(e). McVesting, however, described itself as "McVesting, LLC" in

the caption of the notice of appeal and there was no "McVesting, Inc.," involved in the proceedings before the probate court that might also have appealed. At worst, the error in the body of the notice of appeal is no more than a scrivener's error and does not preclude this appeal.

McVesting argues that the probate court did not have jurisdiction to grant the motion to dismiss and set aside the earlier order. Citing Rule 4(b)(1) of the Arkansas Rules of Appellate Procedure–Civil, and cases interpreting the rule, McVesting argues that by the time the probate court addressed the motion to set aside the order determining heirship, the motion had been deemed denied as a matter of law, the time for appealing the order had passed, and the court had lost jurisdiction to set the order aside and dismiss the petition.

We are not unmindful that appealable interlocutory orders may be deemed untimely appealed. *See In re Estate of Stinnett v. Wilson*, 2011 Ark. 278, ___ S.W.3d ___. Here, however, the appeal was not an appeal by appellees from the earlier order, but instead an appeal by McVesting from the dismissal order. We also acknowledge that the statute governing petitions for determination of heirship provides that the order "shall be conclusive upon all parties to the proceeding having or claiming an interest in the property, subject to the right of appeal, and may be set aside only upon such grounds and under such circumstances and in the manner provided by law for setting aside the final judgment or decree of a court of general jurisdiction." Ark. Code Ann. § 28-53-101(d)(1). The Probate Code, however, further provides that "[f]or 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." Ark. Code Ann. § 28-1-115(a) (Repl. 2012). Thus, "the statute establishes an extended period during which courts have jurisdiction to modify or vacate orders in probate proceedings." *Helena Regional Medical Center*, 362 Ark. at 126, 207 S.W.3d at 546. Accordingly, the probate court had jurisdiction to set aside its previous order. We observe that there has not been a final termination of these proceedings, as the mineral estate has not been distributed and there are pending cross-claims and counterclaims. Further, it is not entirely clear that the order determining heirship would have ended the proceedings. The order, which purported to determine heirship, did not in fact provide who inherited the reserved mineral estate.

Finally, we turn to the merits of the case. McVesting contends that, contrary to the probate court's ruling, it had standing to bring the petition. The relevant statute provides in part as follows:

> Whenever a person has died leaving in this state property or an interest therein, a person claiming an interest in the property as heir or distributee, or a person claiming through an heir or distributee, or the personal representative of the decedent may file a petition in the circuit court of proper venue for the administration of the decedent's estate to determine the heirs and distributees of the decedent and their respective interests in the estate or the property.

Ark. Code Ann. § 28-53-101(a). According to the statute, a "person" who claims an interest in property in Arkansas through an heir or distributee may bring the petition to determine the heirs and distributees and their interests. Our reading of the statute is guided by the definitions set out in the Probate Code. There, a "person" is defined to include a

"corporation, partnership, or other legal entity." Ark. Code Ann. § 28-1-102(18) (Repl. 2012). McVesting alleged in the petition that it was a legal entity, so it was a "person" and could bring the petition. While appellees also suggest that McVesting should have brought an ancillary probate, there is nothing in the statute to suggest that this is a prerequisite to bring a petition to determine heirship. Accordingly, we reverse the probate court's determination that McVesting lacked standing to bring the petition, and we remand to the probate court for proceedings consistent with this opinion.

Reversed and remanded.

GRUBER, J., agrees.

WYNNE, J., concurs.

ROBIN F. WYNNE, Judge, concurring. While I do not disagree with the analysis of the majority regarding the issue of McVesting's standing, I do not believe that issue should be reached because the circuit court lost jurisdiction to set aside its order. Arkansas Code Annotated section 28-1-115(a) allows a circuit court, for good cause, to vacate or modify a probate order at any time within the period allowed for appeal after the final termination of the administration of the estate of a decedent. In my view, this provision of the Probate Code applies only in the context of the administration of an estate. "Administration of an estate involves realizing the movable assets and paying out of them any debts and other claims against the estate. It also involves the division and distribution of what remains." *Black's Law*

Dictionary 46 (8th ed. 2004). A petition to determine heirship certainly could be brought during the administration of an estate, *see Snowden v. Riggins*, 70 Ark. App. 1, 13 S.W.3d 598 (2000), but that is not what occurred in the present case. Here, there was simply a petition to determine heirship, standing alone.

Our supreme court has stated that "[t]he drafters [of the Probate Code] obviously knew that there was need for greater flexibility in that court in regard to finality of orders in the process of administration of an estate." *Price v. Price*, 258 Ark. 363, 376, 527 S.W.2d 322, 330 (1975). Without the process of administering an estate, this need for flexibility does not exist and section 28-1-115 does not apply to extend the circuit court's jurisdiction to vacate or modify a probate order.

In the present case, McVesting filed a petition to determine heirship, which the court ruled on in its October 1, 2010 order. Nearly a year later, on September 16, 2011, the court entered an order granting appellees' motion for reconsideration, ruling that their motions to dismiss were granted *nunc pro tunc*, and setting aside the order determining heirship. Because section 28-1-115 does not apply in the present case, the circuit court lacked jurisdiction to set aside its previous order. Accordingly, I would reverse on that basis without reaching the merits of appellant's argument.

Gammill & Gammill, by: *Randall L. Gammill*; *Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellant.

Robert S. Tschiemer; *George Carder*, for appellees.