

United States Court of Appeals
For the Eighth Circuit

No. 18-1360

Electa Branch, as Administrator of the Estate of Willie Branch, Jr., Deceased

Plaintiff - Appellant

v.

Emre A. Vural, M.D.

Defendant

Matthew D. Cox, M.D.

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: October 30, 2018

Filed: November 8, 2018

[Unpublished]

Before COLLOTON, BOWMAN, and KELLY, Circuit Judges.

PER CURIAM.

Electa Branch appeals the district court's¹ adverse grant of summary judgment and denial of her motion to reconsider, based on lack of standing, in a counseled diversity action she sought to bring against Matthew Cox, M.D. on behalf of the estate of her deceased husband, Willie Branch, Jr. Upon careful de novo review, we agree with the district court that the Arkansas probate court's order reopening the estate and reappointing Electa administrator ab initio, entered after she had filed this lawsuit, was ineffective to retroactively confer standing. See Hughes v. City of Cedar Rapids, 840 F.3d 987, 991 (8th Cir. 2016) (standard of review); see also Hollingsworth v. Perry, 570 U.S. 693, 705, 715 (2013) (plaintiffs must have standing at all stages of litigation; standing is jurisdictional); Prickett v. Hot Spring Cty. Med. Ctr., 373 S.W.3d 914, 917-19 & 917 n.6 (Ark. Ct. App. 2010) (Arkansas probate court lost jurisdiction to set aside order closing estate no later than 90 days after order was entered); cf. Smith v. Rebsamen Med. Ctr., Inc., 424 S.W.3d 876, 880 (Ark. 2012) (Arkansas probate court could use nunc pro tunc order to correct clerk's clerical error beyond 90 days; nunc pro tunc orders function to make record recite what has actually occurred; they are properly issued only where initial order was actually made, but through clerical misprision, was not entered).

Accordingly, the judgment is affirmed, but the dismissal is modified to be without prejudice. See Cty. of Mille Lacs v. Benjamin, 361 F.3d 460, 464-65 (8th Cir. 2004).

¹The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas.