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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001494-MR

ESTATE OF CECIL WILLIAMS, AND
LINDA WILLIAMS, EXECUTRIX — APPELLANTS

v.

APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 91-CI-00127

ESTATE OF WILLIAM C. OATES, BILLY
OATES, ADMINISTRATOR BILLY OATES,
AS AN INDIVIDUAL JOE WALTON

APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, MAZE, AND NICKELL, JUDGES.

ACREE, JUDGE: This is the fourth appeal in a decades-long attempt to enforce and execute upon a default judgment entered in 1991 and renewed in 2006. Since

1991, the Appellant, Estate of Cecil Williams, and Linda Williams, Executrix, and before that Appellant's decedent, Cecil Williams, have pursued control of a single asset to satisfy that default judgment – a tract of residential real estate located at 1546 Chestnut Street, Bowling Green, Kentucky.

In this iteration of the case, the Williams Estate appeals the Warren Circuit Court's August 25, 2016 Final Order Dismissing which denied the Williams Estate's post-judgment motions and dismissed the case. We affirm.

As the circuit court once said, "The procedural history of this case, now on the docket for a quarter century, could not be more complicated." (Record Vol. I[4][1], page 62). And, as this Court said, Appellant "has not managed this litigation well." *Estate of Williams v. Estate of Oates*, 2012-CA-000327-MR, 2014 WL 2937773, at *4 (Ky. App. June 27, 2014) (hereafter *Williams III*). The case is more completely understood by reading all the previous opinions of this Court. *Id.*; *Williams v. Oates*, 340 S.W.3d 84 (Ky. App. 2010) (*Williams II*); *Williams v. Oates*, 2006-CA-000413-MR, 2006 WL 3334046, at *1 (Ky. App. Nov. 17, 2006) (*Williams I*). However, we will reiterate facts pertinent to this fourth, and hopefully final, appeal.

[1] The Warren Circuit Court record has four separate volumes identified as Volume I. The original Volume I includes pleadings and other documents filed prior to the first appeal. After this Court rendered its first opinion in this case and returned the record to the circuit clerk, a new Volume I was created. The same occurred after the second appeal and, again, after the third. The various Volumes I are identified in this opinion as Vol. I[1], Vol. I[2], Vol. I[3], and Vol. I[4], respectively.

BACKGROUND

In 1990, Cecil Williams loaned William Oates $62,500. The loan was to be repaid in five (5) days. The loan was unsecured. Oates failed to repay the loan according to its terms, and Williams sued Oates. On April 15, 1991, Williams obtained a default judgment against Oates for the loan amount plus interest. The judgment was served on Oates.

Williams took no action for the next thirty days. We can infer that Williams was waiting for the expiration of the time within which Oates could appeal the default judgment to this Court.

The default judgment afforded Williams the opportunity to perfect "a lien upon all real estate in which [Oates] ha[d] any ownership interest, in any county" but it required Williams to file a notice with the county clerk where Oates owned property. KRS[2] 426.720(1), (1)(a). Instead of immediately pursuing this statutory remedy, Williams looked to CR[3] 69.

Williams arranged execution to issue pursuant to CR 69.03. The execution was served on May 17, 1991, but it was returned and filed with the clerk's office several days later marked "no personal property found." (R. Vol. 1[1], pp. 11-23).

[2] Kentucky Revised Statutes.

[3] Kentucky Rules of Civil Procedure.

Pursuant to the same rule, CR 69.03, Williams also sought to take Oates' deposition to discover assets. But Oates thwarted Williams' efforts by means both appropriate (claims of exemption) and inappropriate (refusing to attend or participate at depositions in aid of execution). In early 1993, again using CR 69.03, Williams served Oates with interrogatories seeking information about Oates' holdings. Oates served and filed written responses.

Oates' responses revealed that the residential real estate Williams was seeking as a source of satisfying the judgment was not owned by Oates as Williams thought. Since 1984, the real estate had been owned by Oates' wholly-owned corporation, William C. Oates Realty Co., Inc. The deed had been filed in the Warren County Clerk's office for six years before Williams ever loaned Oates any money.

On the positive side for Williams, Oates' responses revealed he held stock in a wholly-owned corporation which, in turn, owned the real estate Williams sought, all of which could have been discovered by searching government records. And yet, this record shows no effort on Williams' part to execute upon that stock. In fact, the record shows that for more than a decade after Oates filed his interrogatory responses, nothing took place in the circuit court.

Away from the courts, however, events occurred that affected the parties, the real estate, and the collectability of Williams' judgment. In November

1993, the Kentucky Secretary of State administratively dissolved William C. Oates Realty Co., Inc. *Williams III*, 2014 WL 2937773, at *5. The circuit court would later rule that upon dissolution, all the corporate assets including the real estate in question, became the property of Oates individually. (R. Vol. II, pp. 249-54). That ruling has since become law of the case.

For the next three years, equitable title to the residential real estate was vested in Oates individually. Williams took no step to perfect his lien against that property by means of KRS 426.720 (as described above), nor did he pursue execution under CR 69.03.

On November 26, 1996, three years after the corporation was dissolved, thereby vesting equitable title in Oates individually, Oates died intestate. His wife, Esther, and son, Billy, survived him. A year and a half after Oates' death, on May 6, 1998, Williams finally turned to his statutory remedy and filed a Notice of Judgment Lien with the Warren County Clerk. Williams took the inappropriate liberty of identifying the judgment debtor on the Notice as "William C. Oates, d/b/a and a/k/a William C. Oates Realty Co., Inc." even though the judgment was obtained against only "William C. Oates, Jr."[4] (Notice of Judgment

[4] We note that the circuit court occasionally refers to the elder Oates as senior ("Sr.") and Billy as junior ("Jr."). In fact, the father is William C. Oates, Jr., according to the original complaint and other documentation.

Lien, Doc. 296709, Book E70, Page 784, Warren County Clerk's Office).[5] Apparently, this was an attempt to bootstrap the lien to include Oates' previously dissolved corporation. But that was unnecessary. Williams was entitled to collect his judgment against Oates individually from his estate when it was probated.

But it was nearly two years after Oates died before his son Billy probated his father's estate in Warren District Court. On July 10, 1998, Billy was appointed administrator. (R. Vol. I[1], pp. 157-60). Esther and Billy continued to live in the residential real estate Williams pursued to satisfy his judgment.

Billy did not efficiently administer the Oates Estate. On October 5, 1998, the district court ordered him to file an inventory. (R. Vol. I[1], pp. 161-63). The inventory reflected that Oates died owning personal property valued at about $20,000 but owning no real estate. This was not so according to the circuit court's subsequent ruling that Oates became the equitable owner of the real estate when his corporation was dissolved. However, the personal property identified in the inventory included Oates' common stock in his corporation which held legal title to the real property. If Williams had utilized the statutory remedies available to him as we shall describe, this discord about ownership of the real property would have been resolved.

[5] A court may properly take judicial notice of public records pursuant to Kentucky Rules of Evidence (KRE) 201. *Polley v. Allen,* 132 S.W.3d 223, 226 (Ky. App. 2004).

There is no dispute that the Oates Estate was responsible for Oates' debts and it was Billy's duty to pay out of the personal estate all claimed debts of the decedent that are valid whether secured or unsecured. *Jones v. Keen*, 160 S.W.2d 164, 165 (Ky. 1942). As stated in *Jones*, "[i]f the personal estate is not sufficient to pay the debts, the administrator may petition the court for sale of the real estate owned by the decedent at the time of his death." *Id.*; *see also* KRS 395.515.

However, we have not found in this record any indication that Williams asserted a claim against the estate as required by KRS 396.015. Furthermore, as the circuit court noted in the Final Order Dismissing which is the subject of this fourth appeal, Williams was empowered by KRS 395.510 to "bring an action in circuit court for the settlement of [Oates'] estate [beginning] six months after the qualification of" Billy as administrator. KRS 395.510(1). "[O]ne of the purposes of a settlement suit is the foreclosure of all liens on the property of the estate." *Young v. U. S.*, 355 S.W.2d 144, 144 (Ky. 1961). As stated in *Jones*, "*In that manner only* can real estate passing by descent be subjected to the payment of the ancestor's debts . . . ." *Jones*, 160 S.W.2d at 165 (emphasis added).

In accordance with KRS 391.010(1), the subject real estate should have descended to Billy. Instead, Billy, acting in his capacity as administrator of the Oates Estate engaged an attorney to prepare a deed, based on an affidavit of

descent, conveying legal title in the residential property from William C. Oates Realty Co., Inc. and Esther Warren Oates (presumably recognizing Esther's dower interest) to Esther Warren Oates and Billy Oates, jointly with right of survivorship.[6] (R. Vol. I[1], pp. 165-70). The deed was recorded in the Warren County Clerk's office on February 21, 2002. When Esther died in the summer of 2003, Billy became the sole owner of the real estate.

In October 2003, Williams engaged new counsel who filed motions to amend and supplement the original complaint pursuant to CR 15.01. The amended complaint would have named two new defendants – the Oates Estate and Billy – and asserted new claims sounding in fraud with a demand that Williams replace Billy as administrator, that the aforementioned deed be set aside, and that the real property be sold and receipts from the sale be distributed to satisfy, among any other debts, Williams' judgment.

The circuit court originally granted the motion but, after reconsideration, "dismissed" the amended pleadings. "The trial court simply did not have jurisdiction to allow them, and the recognition of this error and reversal was proper." *Williams I*, 2006 WL 3334046, at *2. With the 15-year limitations period soon coming to an end, Williams re-entered and reinstated the judgment in January 2006.

[6] The deed notes on its face that it was prepared without the request for a title search.

Returning to circuit court, Williams moved to file a supplemental complaint pursuant to CR 15.04.[7] Citing this Court's opinion in *Williams I*, the circuit court denied the motion. But he renewed the motion, and further moved the circuit court to "pierce the corporate veil" of the no longer extant William C. Oates Realty Co., Inc. He sought entry of an order to sell the residential real estate. The circuit court again denied Williams' motions. Williams again appealed.

In the second appeal, this Court vacated the circuit court's denial of the motions and remanded the case for the circuit court to reconsider the motions and to grant them, but only "to the extent that these motions seek to enforce the 1991 judgment against William C. Oates." *Williams*, 340 S.W.3d at 87. We held CR 15.04 was the proper vehicle to invoke the court's post-judgment jurisdiction "to enforce its own judgments and to remove any obstructions to such enforcement." *Id.* at 86.

In the meantime, and before this Court rendered the opinion in *Williams II*, Williams died. His widow, Linda, continues to pursue enforcement on behalf of the Williams Estate. On remand, the Williams Estate filed a supplemental pleading describing most of what had occurred between the time of

[7] CR 15.04 provides: "Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted, even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor."

the default judgment and the filing of the supplemental pleading. The Williams Estate then sought to execute upon the residential real estate, now owned by Billy, to satisfy the judgment. *Id.*

The Williams Estate also filed several motions, including a motion for summary judgment specifically raising two points: that the corporate veil should be pierced, and the real property sold by the master commissioner. Utilizing CR 15.04 to pierce a corporate veil post-judgment is appropriate in certain circumstances. *Inter-Tel Techs., Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152, 169 (Ky. 2012) ("There is no valid basis for precluding a piercing action simply because the claim was not part of the original debt collection suit."). However, the circuit court determined there was insufficient evidence to justify piercing the corporate veil as a matter of law and, by order entered February 6, 2012, dismissed the Williams Estate's supplemental complaint in its entirety. This led to the third appeal to this Court.

In the third appeal, the Williams Estate shifted its approach slightly, arguing "reverse" veil-piercing.[8] We noted the Williams Estate did "not ask this Court to review the circuit court's decision on piercing the corporate veil; but yet,

[8] Reverse veil-piercing "is a theory in which the creditor of an individual who is the sole member of a corporation seeks to pierce the [corporate] veil to obtain corporate assets to satisfy the member's personal debt." *Williams III*, 2014 WL 2937773, at *4 (citing *Turner v. Andrew*, 413 S.W.3d 272, 277 (Ky. 2013)). In this case, Williams sought to hold William C. Oates Realty Co, Inc. responsible for Oates' personal debt associated with the August 1990 loan.

the main theory on which she seeks to recover now [reverse veil piercing] is not properly before this Court" because it was not first presented to the circuit court. *Williams III*, 2014 WL 2937773, at *3. Ultimately, this Court refused to find error in the circuit court's decision disallowing veil piercing, found no merit in the Williams Estate's theory that Williams C. Oates Realty Co, Inc. never had any kind of corporate existence and was simply a sole proprietorship, and affirmed the circuit court's order dismissing the Williams Estate's supplemental complaint.

The circuit court's refusal to pierce the corporate veil, upon this Court's affirming of that decision, became law of the case. *Brooks v. Lexington-Fayette Urban County Hous. Auth.*, 244 S.W.3d 747, 751 (Ky. App. 2007) (Law of the case "doctrine considers as settled all errors lurking in the record on the first appeal which might have been, but were not expressly, relied upon as error" (internal quotation marks and citation omitted)). We did not remand the case for further proceedings, but simply affirmed. *Williams III*, 2014 WL 2937773, at *5.

Nevertheless, the Williams Estate returned to the circuit court and filed a "summary of proceedings to date, renewal of motions, new motions, and notice of hearing" along with a "memorandum of case status following appeals" and a "motion to refer case to the master commissioner for sale" of the real estate. The bulk of the Williams Estate's filings simply recounted the matter's procedural history. However, it presented two specific motions: to set aside the "fraudulent

conveyance" of the real estate to Billy and Esther and refer the case to the Master Commissioner for sale of that property, and to remove Billy as administrator of the Oates Estate and appoint a successor administrator. Neither of these actions by the circuit court could have been justified within the ambit of Williams' original complaint, the subject matter of which was a simple collection action on an unsecured note.

Notably, the Williams Estate's motion to set aside the conveyance of the real estate relied on an order this Court determined in *Williams I* to be void *ab initio* because it was entered when the circuit court lacked jurisdiction. The circuit court, clearly perplexed by Williams' most recent motion practice, entered its comprehensive Final Order Dismissing on August 25, 2016. It explained:

> [The Williams Estate] tries to rely on language from the January 5, 2005, order stating that [Oates] obtained title to the real property when the corporation was administratively dissolved in 1993. [The Williams Estate] states that the order was never appealed, and thus it is *res judicata*. However, that order is actually *void ab initio*. It was rendered prior to this Court obtaining jurisdiction via the CR 15.04 pleading filed on September 27, 2007, and ordered filed on July 5, 2011. Its determination on the merits cannot be relied upon.
>
> The procedural posture of this case is that it is dismissed. It was dismissed on February 6, 2012. That order was affirmed [by the Court of Appeals] and the Kentucky Supreme Court denied discretionary review. There is no complaint before this Court giving this Court jurisdiction to entertain any of [Williams'] motions. Moreover, the pending motion to remove Billy Oates as Administrator,

> and appoint [Linda Williams] as Administrator go well beyond the limited pleadings that were authorized under CR 15.04. Only pleadings seeking to enforce the judgment were to be entertained, not motions and pleadings seeking to control probate proceedings. This Court has the power to enforce its judgments. [The Williams Estate] attempted to do so by way of pleading a supplemental complaint under CR 15.04. That complaint was dismissed, the order was affirmed, and no further appellate remedies were granted.

(R. 66-67).

Displeased with the circuit court's decision, the Williams Estate filed a CR 59.05 motion to set aside the August 25, 2016, dismissal order. The Williams Estate accused the circuit court of selective jurisdiction. The circuit court denied the motion, and the Williams Estate again appealed.

STANDARD OF REVIEW

The Williams Estate challenges the circuit court's order again dismissing his supplemental complaint. When ruling upon a motion to dismiss, a circuit court is not required to make any factual findings. *Benningfield v. Pettit Envtl., Inc.*, 183 S.W.3d 567, 570 (Ky. App. 2005) (citing *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002)). Only legal issues are before us, and our review is *de novo*. *Id.*

ANALYSIS

We are presented with multiple intertwined arguments and will attempt to untangle them to address each as it is presented in the brief.

The first substantive argument the Williams Estate makes is that a court always has jurisdiction, authority, and the duty to enforce its own judgments and to remove obstructions to such enforcement. We will not disagree with this concept in principle. But what the Williams Estate demands of the circuit court in this case is not removal of an obstruction. It wants the circuit court to circumvent procedures established by statute and otherwise – procedures Williams failed to utilize that would have facilitated recovery on his judgment. The obstruction here is not really an obstruction at all. What the Williams Estate desires is for the circuit court to undo the consequences of its failure to implement statutory means of recovery of its judgment against Oates.

From 1993 to 1996, after Oates' corporation dissolved and the real estate became Oates' individual property (subject to Esther's dower interest), Williams had an opportunity to execute on the real estate pursuant to CR 69.03 and force its sale, but he failed to do so. He also failed to perfect the judgment lien while Oates was alive. KRS 426.720. When the real estate was subject to the jurisdiction of the district court in probate, Williams failed to file a claim against the Oates Estate. KRS 396.015. Six months after Billy was named administrator, Williams could have brought a settlement action to foreclose on the judgment lien but also failed to do that. KRS 395.510(1); *Young*, 355 S.W.2d at 144; *Jones*, 160 S.W.2d at 165.

It is not within the circuit court's jurisdiction or authority to cure the disappointment of a party who allows knowable opportunities for collecting a judgment to slip through his fingers. That is not what our jurisprudence means when we say that obstructions to collection of judgments can be removed by the circuit court. This argument is without merit.

Next, the Williams Estate contends the circuit court erred in declaring the January 2005 order void *ab initio*. It also argues the factual findings and rulings contained in the January 2005 order, which it claims Oates never cross-appealed, constitutes a *res judicata* decision. We cannot agree.

We need say nothing more than that this Court ruled in *Williams I* that the post-judgment litigation precipitated by Williams' motion to amend the original pleadings was undertaken after the circuit court lost jurisdiction. We said:

> The Warren Circuit Court lost jurisdiction of the judgment ten days from the date the original default judgment was signed and entered on April 15, 1991. The orders of October 2003 and March 2004 amending and/or supplementing the original complaint were void *ab initio.* The trial court simply did not have jurisdiction to allow them, and the recognition of this error and reversal was proper.

Williams I, 2006 WL 3334046, at *2. The very same ruling that applied to the specified orders has equal application to every act of the circuit court after it lost jurisdiction (April 25, 1991) and prior to the filing of the motion to supplement

pleadings (September 21, 2007). That includes the Order of January 31, 2005. It too was void *ab initio*.

It is well established in Kentucky law that any order issued by a court while it lacked jurisdiction is void *ab initio*. *Cabinet for Health and Family Services v. J.T.G.*, 301 S.W.3d 35, 39 (Ky. App. 2009). A void order is not entitled to any respect or deference by the courts. *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 833 (Ky. App. 2008). It is "a legal nullity, and a court has no discretion in determining whether it should be set aside." *Foremost Ins. Co. v. Whitaker*, 892 S.W.2d 607, 610 (Ky. App. 1995).

The Williams Estate claims that once jurisdiction has attached, no subsequent judgment or order can be found void or void *ab initio.* In effect, it claims a court's jurisdiction is eternal. That is profoundly wrong. As we said, a circuit court loses jurisdiction ten days after the entry of a final judgment. *Goldsmith v. Fifth Third Bank*, 297 S.W.3d 898, 904 (Ky. App. 2009). Jurisdiction lost can be revived only by rule or statute, *id.*, as the Williams Estate revived jurisdiction pursuant to CR 15.04.

Williams also argues that, despite the dismissal, he is entitled to pursue his fraudulent conveyance theory in this action because he raised it in his supplemental complaint. The time to argue that theory has passed. It could, and should, have been raised before the circuit court and this Court in the third appeal.

Williams' supplemental complaint has been dismissed in its entirety, and we are bound by that ruling for it is the law of the case. *Brooks*, 244 S.W.3d at 751 ("The law of the case doctrine is 'an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been.'" (Citation omitted)). To accept Williams' position would promote the type of piecemeal litigation contrary to the policy of the courts. *Overstreet v. Greenwell*, 441 S.W.2d 443, 446 (Ky. 1969).

Further, as noted by the circuit court, Williams' motion to remove Billy as administrator of his father's estate goes well beyond the limited pleadings authorized by CR 15.04 to enforce the default judgment. That motion seeks to interfere with probate proceedings in district court where Williams should have filed a claim; it has no bearing on the enforcement of the default judgment. And, again, we are unpersuaded.

Williams then makes an argument wanting for logical support. If orders entered after April 25, 1991, are void *ab initio*, asserts the Williams Estate, then the void *ab initio* ruling "would reach all the way back and all the way forward, and it would be fatal to the satisfaction of the plaintiff's default judgment." (Brief of Appellant, p. 15). We cannot fathom how one could draw such an inference.

There is no doubt the circuit court had jurisdiction to enter the default judgment in April 1991. Need we say again that jurisdiction over this particular case did not cease until ten days after entry of that judgment? *Rollins v. Commonwealth*, 294 S.W.3d 463, 466 (Ky. App. 2009) ("A court loses jurisdiction ten days after the entry of final judgment."); *Commonwealth v. Steadman*, 411 S.W.3d 717, 722 (Ky. 2013) ("A court's power to affect its own judgment within ten days of entry . . . is this latter category: jurisdiction over a particular case.").

The April 1991 default judgment is valid. *Williams I,* 2006 WL 3334046, at 2 ("The original default judgment of April 15, 1991, remains in effect."); *Williams III*, 2014 WL 2937773, at *3 n.4 ("We note that the default judgment was not set aside as alleged by Williams on appeal."). And we will say again – Williams default judgment against Oates, which became an asset of the Williams Estate, remains valid. Whether now there is a means or method by which that judgment can be satisfied remains to be seen. The relative priority of the Williams Estate in the real property based on the judgment lien it finally perfected in Warren County on May 6, 1998, is not before this Court, nor can it be an issue in circuit court in this case once this opinion is rendered and becomes final. That and any other claim of right the Williams Estate desires to pursue will require an independent action because all the issues raised in the original 1991 complaint have been fully, thoroughly, and finally fleshed out. That original cause of action

cannot, under the guise of a post-judgment supplemental pleading pursuant to CR 15.04, be modified, transformed, tweaked, massaged, or altered to include new causes of action against new parties.

CONCLUSION

We affirm the Warren Circuit Court's August 25, 2016 Final Order Dismissing.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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