

MORGAN SCHEXNAYDER

NO. 21-C-259

VERSUS

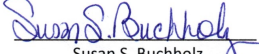
FIFTH CIRCUIT

TAMMY SCHEXNAYDER

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS



Susan S. Buchholz
First Deputy, Clerk of Court

June 21, 2021

Susan Buchholz
First Deputy Clerk

IN RE TAMMY SCHEXNAYDER

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE DONALD A. ROWAN, JR., DIVISION "L", NUMBER 815-688

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Jude G. Gravois

WRIT GRANTED, IN PART

Relator, Tammy Schexnayder, seeks review of the trial court's May 25, 2021 judgment denying her exceptions of prescription, res judicata, lis pendens, forum non conveniens, improper venue, lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to join an indispensable party. For the following reasons, we grant relator's writ application, in part; reverse the trial court's judgment insofar as it denies relator's exception of improper venue; pretermite review of relator's remaining exceptions; and remand this matter to the trial court for transfer of the proceedings to the Fortieth Judicial District Court, Parish of St. John the Baptist.

Factual Background and Procedural History

This writ application involves a contentious dispute arising out of the intestate Succession of Richard Schexnayder, who died in December 2015, allegedly owing several debts, including to his sister, Tammy Schexnayder ("Tammy"), relator herein. At the time of Richard's death, his sole surviving heir, Morgan Schexnayder ("Morgan"), was a minor. Her mother, Terry Koehler ("Terri")(decedent's ex-wife), was appointed the succession administrator.

Richard's succession was opened in January 2016, and continues to be litigated in St. John the Baptist Parish, where decedent lived and died. Tammy filed suit against the succession in September 2016 after making a claim that had not been recognized during the administration of the succession. Specifically, Tammy alleged that decedent owed her in excess of \$375,000 for personal loans

made to him, and for personal losses she sustained from her investment in Richard's business venture.

According to the record, on May 24, 2018, a compromise was allegedly reached between the succession (through its administratrix, Terri), Morgan, and Tammy, whereby pursuant to an assignment of interest, in exchange for the payment of \$45,500.00 and a release of all of Tammy's claims against the succession, Morgan purportedly agreed to transfer to Tammy all of her interests in any movable and immovable property belonging to the decedent held by the succession. Even though Morgan had already reached the age of majority, on May 24, 2018, both "Settlement, Release, Hold Harmless, and Indemnity Agreement" memorializing the terms of the aforementioned settlement and an "Assignment of Interest" were signed by Terri before a notary and two witnesses, in her capacity as the administratrix of the succession and as the natural tutrix of Morgan. A judgment of possession was signed on May 30, 2018, thereby placing Morgan into possession as the sole heir to the decedent's assets. The following day, Tammy signed the settlement agreement and the assignment of interest.

A second assignment of interest, presumably an amendment to the original, was executed on June 13, 2018, between Terri, as the administratrix of the succession, Morgan as a "natural person of full age and majority," and Tammy. The assignment specifically identified Tammy as a "creditor of the succession" and memorialized the parties' intent to compromise their differences arising out of the succession for purposes of avoiding the expense and uncertainty of litigation. These documents were signed by the parties at the law office of the attorney for the succession, which is located in Jefferson Parish.

Although a judgment of possession in the succession has been rendered, litigation continues in the succession with Tammy, pursuant to the assignment of interest, seeking to enforce her rights against a third party who is holding some of the succession's assets.

On March 15, 2021, Morgan filed a "Petition to Annul Assignments and All Associated Documents and Transactions, and For Preliminary Injunction, Injunction, and Damages" in Jefferson Parish. In her petition, Morgan alleges that although she was a minor when her father passed away, by the time of the judgment of possession, she had reached the age of majority. Likewise, Morgan contends that at the time the Assignments of Interests and the Settlement agreement were executed and notarized, they were "unauthorizedly and mistakenly" signed by Terri, acting as "the natural tutrix of her minor child," instead of Morgan, who had reached the age of majority and had the legal capacity to sign on her own behalf. Consequently, Morgan avers that the assignment is "an absolute nullity," and that the purported transfer of certain movable and immovable property from Morgan and the succession to Tammy in exchange for Tammy's release of certain claims made against the succession is unenforceable. Morgan alleges that the judgment of possession recognizing her as the sole owner did not recognize any debt owed to Tammy.¹ Accordingly, Morgan alleges that, as Tammy is not a creditor of the succession, she is entitled to the rescission of the agreements, a return of all items and assets of the succession that Tammy received, reimbursement for the value of any succession items Tammy has sold by virtue of the absolutely null assignments, and damages. Morgan's petition also prays that

¹ The Sworn Descriptive List filed in connection with the Judgment of Possession did include the claim Tammy made against the succession for the debt her deceased brother allegedly owed to her.

Tammy be enjoined from exercising any right of ownership over assets of the succession allegedly obtained as a result of the assignments, and that she be ordered to return Morgan's litigation file that she "fraudulently obtained."

In response to Morgan's petition, Tammy filed numerous exceptions, including the declinatory exceptions raising the objections of improper venue, *lis pendens*, lack of subject matter jurisdiction, and lack of personal jurisdiction. Tammy also filed peremptory exceptions raising the objections of prescription, *res judicata*, and nonjoinder of indispensable party. A hearing on these exceptions was conducted on May 17, 2021. At the hearing, Tammy introduced evidence of the succession proceedings in St. John the Baptist Parish, in addition to the Assignments of Interest at issue; a Settlement, Release, Hold Harmless and Indemnity Agreement purportedly settling Tammy's claim against the succession; and, a Quit Claim Deed evidencing that the Estate of Richard Shexnayder sold and delivered the property located in Jefferson Parish in November 2017. At the conclusion of the hearing, the trial court denied all of the exceptions without reasons. A written judgment to this effect was signed on May 25, 2021. This writ application followed.

Discussion

Since we find that Morgan's petition was improperly filed in Jefferson Parish, requiring reversal of the trial court's judgment and the transfer of this matter to St. John the Baptist Parish, we pretermit review and discussion of all exceptions filed other than the exception of improper venue.

Venue is a question of law. *Boes Iron Works, Inc. v. Travelers Cas. and Sur. Co. of Amercia*, 05-782 (La. App. 5 Cir. 3/28/06), 927 So.2d 553, 555. Accordingly, we review the trial court's denial of Tammy's exception of improper venue *de novo*. *Id.* The venue provisions relating to succession proceedings are mandatory and may not be waived. La. C.C.P. art. 44; *Succession of Simms*, 175 So.2d 113, (La. App. 4 Cir. 1965), *affirmed*, 195 So.2d 114 (1966). Thus, in succession proceedings, venue is jurisdictional. *Succession of McElwee*, 276 So.2d 391, 392 (La. App. 2 Cir. 1973). Only the district court in the parish of the decedent's domicile at the time of his death has jurisdiction to adjudicate succession matters. *See* La. C.C.P. arts. 2811 and 81; *Estate of Bradford v. Thomas*, 29,807 (La. App. 2 Cir. 9/24/97), 700 So.2d 1030, 1032 n. 6. Louisiana has a strong public policy that all succession matters be adjudicated in the court where the succession is open and pending. *Gerrets v. Gerrets*, 06-87 (La. App. 4 Cir. 1/10/07), 948 So.2d 343, 348, *writ denied*, 07-574 (La. 5/4/07), 956 So.2d 622.

Here, Tammy resides in Ascension Parish and Morgan resides in St. Tammany Parish. Although a judgment of possession has been rendered in the original succession, litigation continues in that succession proceeding in St. John the Baptist Parish.² The assignments of interest and the settlement document at issue herein are integrally related to the pending succession proceedings; *i.e.*, resolution as to the validity of the agreements will directly impact those proceedings. Morgan filed the instant suit against Tammy in Jefferson Parish *solely* on the basis that the assignments of interest and the settlement agreement,

² After a succession representative has been discharged or a judgment of possession has been rendered, if other property of the succession has been discovered, or for any other proper cause, the succession may be reopened. *See* La. C.C.P. arts. 3393(A) and 3393 (B)

which she seeks to annul because she allegedly did not sign them, happened to be signed and notarized in Jefferson Parish where the law office of the attorney for the succession is located.³ Because the succession that forms the basis for the agreements that Morgan seeks to annul remains open in St. John the Baptist Parish and matters are still being litigated therein, despite the incidental connection to Jefferson Parish, we find the trial court erred in failing to grant Tammy's exception of improper venue.

Accordingly, we grant Tammy's writ application, in part, and reverse that portion of the May 25, 2021 judgment denying the exception of improper venue. Further, we render judgment granting Tammy's exception of improper venue and remand this matter to the trial court for transfer of the proceedings to the Fortieth Judicial District Court, Parish of St. John the Baptist.

Gretna, Louisiana, this 21st day of June, 2021.

SMC
FHW
JGG

³ Morgan contends that Jefferson Parish is also a proper venue because the succession owned property in Jefferson Parish that was included in the May 30, 2018 judgment of possession. The documents introduced at the hearing, however, evidence that the Estate of Richard Schexnayder sold this property to a third party in November 2017.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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FIRST DEPUTY CLERK

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/21/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-C-259

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Donald A. Rowan, Jr. (DISTRICT JUDGE)
M. Elizabeth Bowman (Relator) Christy M. Howley (Relator)
 Andrew A. Lemmon (Respondent)

MAILED

Scott Falgoust (Respondent)
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