Opinion issued November 9, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00059-CV

DORNICE HART, Appellant

V.

CIANDRA JACKSON, Appellee

On Appeal from the 247th District Court
Harris County, Texas
Trial Court Case No. 2004-14056

MEMORANDUM OPINION

The issue in this case is whether the trial court has personal jurisdiction to enforce a child-support settlement agreement between a child-support obligee and the child-support obligor's estate when, after the obligor's death, the personal

representative of the child-support obligor was never made a party to the suit, either as a personal representative or individually. Because we hold that the trial court lacks personal jurisdiction over the estate to enforce the agreement, we affirm the trial court's judgment.

BACKGROUND

On July 23, 2004, Anthony J. Mills and appellant, Dornice Hart, were divorced in the 247th District Court of Harris County, Texas. The divorce decree ordered Mills to pay child support to Hart for the benefit of their minor child, Meri A. Mills. The divorce decree provided that "the provisions for child support in this decree shall be an obligation of the estate of Anthony J. Mills and shall not terminate on the death of Anthony J. Mills."

On January 3, 2016, Mills died. His heirs at the time of death included a surviving spouse, Ciandra Jackson, and a minor child from his marriage to Jackson, Senait Mills. Mills was also survived by Meri A. Mills, the child provided for in the 2004 divorce from Hart, who had since reached the age of majority.

Hart alleges that Mills owed her an undetermined amount of past-due child support. To address the issue of past-due child support after Mills's death, on

November 18, 2019, Hart, Jackson, Meri, and Senait[1] executed a "Settlement Agreement." In this document, the Parties agreed to the following:

> From [] Mills' estate's portion of the sales proceeds of the property having the physical address of 3535 Wentworth, Houston, Harris County, Texas, 77004 . . . [Hart] will receive Fifty-eight Thousand Dollars ($58,000.00) as full and final settlement of any and all unpaid child support owed to [Hart] by [Mills's estate][2] which sale is scheduled to close no later than December 13, 2019; and
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> [Hart] will execute a Waiver of Child Support Lien and cause same to be recorded in the real property records of Harris County, Texas and filed with the 247th Judicial District Court in the above referenced and numbered cause.

On May 26, 2020, someone caused the settlement agreement to be filed in this case, the underlying divorce action. The record is not clear regarding who filed the document in the papers of the case. There are no pleadings against Jackson in the divorce case, and she has never been served in the proceeding, either in her individual capacity or as a representative of Mills's estate. And, Hart has never filed a motion to modify child support, a request or order to mediate child support, or a request for a determination of the amount of past-due child support that Mills may have owed before he died.

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[1] Jackson signed the settlement agreement both individually and as next friend of Senait Mills, a minor child.

[2] Another portion of the settlement agreement defines "Obligee" as Dornice Y. Hart and "Obligor" as Anthony J. Mills' Estate by and through his surviving spouse, Ciandra Jackson Mills."

The record also indicates that, around this same time, a proceeding was filed in probate court requesting that Mills's homestead be sold and that the proceeds be paid into the registry of the court because an *ad litem* was needed to represent the interests of the minor child and heir, Senait. It also appears that an affidavit of heirship was filed in the Harris County real property records indicating that Jackson, Meri Mills, and Senait Mills were Mills's only surviving heirs, that Mills died without a will, that there was no administration of Mills's estate, and that Mills had no unpaid debts or estate/inheritance taxes.

On June 19, 2020, Hart filed a "Motion to Enforce and Approval of Settlement Agreement" in the divorce case, asking the trial court to summarily "enter a money judgment of $58,000.00 as child support arrearages[.]"

On July 6, 2020, Jackson filed a suggestion of death, objected that the divorce court had no jurisdiction over her personally or as a representative of Mills's estate, as neither had ever been served, and "urged [the trial court] to issue a Writ of Scire Facias requiring the joinder of the lawful representative of the estate of the deceased." Hart opposed issuance of a writ of scire facias, arguing that Jackson had made an appearance in the case when the settlement agreement was filed.

After a hearing on Hart's Motion to Enforce Settlement and consideration of Jackson's jurisdictional objection, the trial court enter the following order:

> After considering the Petitioner Dornice Hart's self-styled "Motion to Enforce and Approval of Settlement Agreement" (the "Motion"), as well as extensive briefing and oral arguments, the Court find the Motion is without merit and is of the opinion that this Motion be DENIED. The Court further finds that it is without jurisdiction over this matter.
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> IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner's Motion to Enforce and Approval of Settlement Agreement is hereby DENIED in all respects; it is further
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> ORDERED that this matter be transferred to Cause Number 480904 in Probate Court No. 3 of Harris County, Texas.

PROPRIETY OF TRIAL COURT'S ORDER

Hart contends the trial court's order was erroneous because the trial court had subject-matter jurisdiction to enforce the executed settlement agreement. Specifically, in three issues, Hart contends that (1) Sections 154.013 and 153.007(d) and (e) of the Texas Family Code "grant[] subject-matter jurisdiction to the trial court to enforce the executed Settlement Agreement; (2) Jackson is authorized to execute the settlement agreement individually and as next friend to Senait Mills; and (3) a probate proceeding is not required to approve and enforce a binding settlement agreement concerning child support arrearages, which the parties have fully negotiated and to which they have agreed. We address each argument respectively.

Texas Family Code Sections 154.013 and 153.007(d) & (e)

Section 154.013 of the Family Code is entitled "Continuation of Duty to Pay Support After Death of Obligee" and requires a party who owes child support to continue paying child support even after the Obligee dies. *See* TEX. FAM. CODE §154.013. In this case, the child-support obligor, Mills, has died; the child-support obligee, Hart, is still living. Thus, section 154.013 provides no support for Hart's contention that the trial court has subject-matter jurisdiction.[3]

Hart also cites Section 153.007(d) & (e) of the Family Code to support his argument that the trial court has subject-matter jurisdiction. However, section 153.007 is entitled "Agreed Parenting Plan," and has no application to the situation presented. If, however, Hart intended to reference section 153.0071 of the Family Code, entitled "Alternate Dispute Resolution Procedures,"[4] we note that there was

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[3] We also note that the issue in this case is not one of subject-matter jurisdiction. The divorce court has continuing subject-matter jurisdiction *over the parties* to modify child-support orders. *See* TEX. FAM. CODE §§ 159.205, 159.206. We note again Hart has not filed a motion to modify the 2004 child support order, a motion ordering mediation of the alleged past-due child support, or a motion to determine the child-support arrearages. We also note that personal jurisdiction over *the parties* continues as long as the court has continuing, exclusive jurisdiction to modify its child-support order. *See id.* § 159.202. However, the question in this case is whether the trial court has personal jurisdiction over the representative of the Mills's estate or Jackson, individually.

[4] Section 153.0071 of the Family Code provides that "the court may refer a suit affecting the parent-child relationship to mediation," and that "[a] mediated settlement agreement is binding on the parties" if it contains a statement in boldfaced type or capital letters that it is not subject to revocation, is signed by each party to the agreement, and is signed by the

no court-ordered mediation or any other sort of mediation. And, again, neither the representative of the estate nor Jackson, personally, were ever parties to the suit affecting the parent-child relationship.

Because neither of the statutes upon which Hart relies are applicable, we overrule issue one.

Jackson's Authority to Sign the Settlement Agreement as Senait's Next Friend

Hart also contends that the trial court had a ministerial duty to enforce the settlement agreement because Jackson had the authority to sign the agreement as next friend of her minor daughter, Senait. However, whether the settlement agreement is valid as to Senait's interest in Mills's estate is irrelevant to the issue of whether the trial court could enforce the settlement agreement against the representative of the estate or Jackson, personally.

Accordingly, we overrule issue two.

No Probate Proceeding Required to Approve and Enforce Settlement Agreement?

Finally, Hart contends that "a probate proceeding is not required for this Court to exercise its jurisdiction to enforce a valid Settlement Agreement." In support of this contention, Hart cites *In re Marriage of Grossnickle*, 115 S.W.3d 238, 242 (Tex. App.—Texarkana 2003, no pet.), which provides:

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party's attorney, who is present at the time the agreement is signed. *See* TEX. FAM. CODE § 153.0071(c), (d), (e).

> That section [TEX. FAM. CODE § 154.013] is effective for modification or enforcement proceedings commenced on or after September 1, 2001, and among other things provides that the Texas Probate Code does not control over the disposition of an estate when child support is involved.

Id. However, *Grossnickle* is interpreting Family Code section 154.013, which we have already noted applies upon the death of the obligee and provides that there is no need to go through the obligee's estate because the money is then owed to the child named in the support order and can be paid to various persons or entities on behalf of the child. *See* TEX. FAM. CODE § 154.013. In this case, the deceased person is Mills, the child-support obligor. Hart is the child-support obligee, thus section 154.013 does not apply.

Accordingly, we overrule issue three.

Jurisdiction over the Personal Representative of Mills's Estate or Jackson

Nevertheless, Hart argues that "[by] entering into the Settlement Agreement, which is an affirmative action, the Appellee, CIANDRA JACKSON, has voluntarily made her appearance, consented to the jurisdiction of the trial court concerning the Settlement Agreement at issue and has waived service of process and the issuance of a Writ of Scire Facias."[5] The authorities cited by Hart to

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[5] We note that, on July 6, 2020, Jackson filed a "Suggestion of Death, Objection to Jurisdiction, and Request for Oral Hearing." In this Motion, Jackson "urged [the trial court] to issue a Writ of Scire Facias requiring the joinder of the lawful representative of the estate of the deceased." Hart does not complain on appeal that a scire facias did not or should have issued and, in any event, could not do so

support this contention stand for the principles that (1) while an intervenor must ordinarily serve a defendant who has yet to be served at the time of intervention, service is not necessary if that defendant subsequently makes a general appearance, *see Baker v. Monsanto Co.*, 111 S.W.3d 158, 160 (Tex. 2003), and (2) that a defendant may waive service of process by making a general appearance. *See In re M.D.H.*, 579 S.W.3d 744, 758–59 (Tex. App.—Houston [1st Dist.] 2019, no pet.), *Fridl v. Cook*, 908 S.W.2d 507, 510–11 (Tex. App.—El Paso 1995, writ dism'd w.o.j.); *see* TEX. R. CIV. P. 120.

In this case, the settlement agreement was filed in the divorce court by someone, but the record does not establish that it was filed by Jackson. When the settlement agreement was filed, it was not accompanied by any request for relief and there were no pleadings pending against either the representative of Mills's estate[6] or Jackson, individually. Essentially, Hart, without any citation to authority,

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in the first instance on appeal. *See Blum v. Goldman*, 1 S.W.899, 900 (Tex. 1886) ("It was the privilege of the [plaintiff] to suggest the death of the deceased [defendant], and to have had the cause continued for service on his legal representative. This was not done, and no objection taken to the action of the court in that regard, until the point was raised [on appeal]. It is now too late to complain."). Hart, instead, contends, as she did at trial, that Jackson waived the necessity for a writ of scire facias.

6 No writ of scire facias was ever entered, Hart never requested one, and no one complains about that on appeal. No judgment could be issued against the estate of Mills without a scire facie or appearance by Mills's legal representative. *See Futrell v. State & Cty. Mut. Ins. Co.*, No. 05-95-01052-CV, 1996 WL 479555, at *4 (Tex. App.—Dallas Aug. 19, 1996, no writ) (not designated for publication) (holding judgment against heirs and legal representatives without service of scire

asks this Court to conclude from the fact that a contract is filed in the documents of a court case that all parties who signed such contract have consented to the jurisdiction of the trial court in which the contract is filed. Even if Jackson caused the Settlement Agreement to be filed in the divorce court, Hart does not analyze how this constitutes "affirmative action" by Jackson. Nevertheless, as the Court is considering jurisdiction, we will undertake the required analysis.

Establishing personal jurisdiction over a defendant requires valid service of process. *In re P. RJ E.*, 499 S.W.3d 571, 574 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *see In re E.R.*, 385 S.W.3d 552, 563 (Tex. 2012) ("Personal jurisdiction, a vital component of a valid judgment, is dependent 'upon citation issued and served in a manner provided for by law.'") (quoting *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990)). A complete failure of service deprives a litigant of due process and deprives the trial court of personal jurisdiction; any resulting judgment is void and may be challenged at any time. *In re E.R.*, 385 S.W.3d at 566; *In re P. RJ E.*, 499 S.W.3d at 574–75. At a minimum, "due process requires 'notice and an opportunity to be heard.'" *In re P. RJ E.*, 499 S.W.3d at 575.

However, complaints regarding service of process can be waived: a party waives a complaint regarding service of process if they make a general appearance. *In re D.M.B.*, 467 S.W.3d 100, 103 (Tex. App.—San Antonio 2015,

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facias or appearance of legal representative is against Texas Rule of Civil Procedure 152's requirement of scire facias).

pet. denied); *see* TEX. R. CIV. P. 120a (setting out procedure for making special appearance, providing that special appearance "shall be made by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion," and stating that "[e]very appearance, prior to judgment, not in compliance with this rule is a general appearance"). A party enters a general appearance when they (1) invoke the judgment of the court on any question other than the court's jurisdiction, (2) recognize by their acts that an action is properly pending, or (3) seek affirmative action from the court. *In re D.M.B.*, 467 S.W.3d at 103 (quoting *Exito Elecs. Co. v. Trejo*, 142 S.W.3d 302, 304–05 (Tex. 2004) (per curiam)); *see In re R.A.G.*, 545 S.W.3d 645, 655 (Tex. App.—El Paso 2017, no pet.); *see* TEX. R. CIV. P. 120 (providing that defendant may, in person or by attorney, enter appearance in open court and this appearance "shall have the same force and effect as if the citation had been duly issued and served as provided by law").

In determining whether a general appearance has occurred, the emphasis is on *affirmative action* by the party, not on whether the party seeks affirmative relief. *In re D.M.B.*, 467 S.W.3d at 104 (emphasis added). "[A] party's request for affirmative action constitutes a general appearance because such a request recognizes a court's jurisdiction over the parties, whereas the mere presence by a party or his attorney does not constitute a general appearance." *Id.* at 103.

In this case, the settlement agreement, which was signed by Jackson, was filed in this divorce case on May 26, 2020. While it is signed by all the parties to the agreement, nothing in the clerk's record shows that Jackson filed the document. It is not accompanied by any request from Jackson for action by the trial court. In fact, the first request for action by the trial court is the June 19, 2020 Motion to Enforce and Approval of Settlement Agreement, which was filed by Hart, not Jackson. Thus, we conclude that the record shows no affirmative action by Jackson, either as an heir or representative of the estate of Mills, or individually.

CONCLUSION

Because Jackson was never served and did not make a general appearance, and because Mills's estate has not been made a party to the suit by writ of scire facias as required by Texas Rule of Civil Procedure 152, the trial court did not err in concluding that it had no personal jurisdiction over either Jackson or the estate to order the relief Hart requested, i.e., to "enforce the Settlement Agreement" and "enter a money judgment of $58,000.00 as child support arrearages[.]" Because Hart's brief does not complain about the trial court's transfer of the proceeding to the probate court, we need not address that issue, and decline to do so.

Accordingly, we affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Kelly and Landau.