Rel: March 8, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0635

Ex parte 2215 Northport OpCo LLC and 2215 Northport PropCo LLC

PETITION FOR WRIT OF MANDAMUS

(In re: Eric J. Anders, as personal representative of the Estate of Charlie G. Sansing, deceased

v.

2215 Northport OpCo LLC and 2215 Northport PropCo LLC)

(Tuscaloosa Circuit Court: CV-2022-900664)

MITCHELL, Justice.

Charlie G. Sansing died in Tuscaloosa County in 2020. Nearly two years later, Tuscaloosa attorney Eric J. Anders petitioned the Tuscaloosa Probate Court to appoint him as the administrator ad colligendum of Sansing's estate -- a role that would authorize Anders to collect and manage Sansing's assets while they awaited distribution to his beneficiaries. The probate court granted Anders's petition. Anders then brought in the Tuscaloosa Circuit Court a wrongful-death action against 2215 Northport OpCo LLC d/b/a Forest Manor Health and Rehabilitation and 2215 Northport PropCo LLC (collectively referred to as "Northport") just one day before the two-year limitations period expired. Northport moved to dismiss the action, arguing that Anders was not a proper plaintiff because the probate court had not appointed him as the personal representative of Sansing's estate and Alabama law does not permit anyone other than a personal representative to bring a wrongful-death action, see § 6-5-410, Ala. Code 1975. And, Northport argued, because no properly appointed personal representative had brought a wrongful-death action within the two-year limitations period, the cause of action was extinguished.

Despite the probate court's order appointing Anders to only the limited role of administrator ad colligendum, and despite our caselaw specifying that only executors and general administrators may serve as personal representatives in a wrongful-death action, the circuit court denied Northport's motion. Northport petitions this Court for a writ of mandamus directing the circuit court to dismiss the case. Because the materials clearly establish that Anders is not a proper party to bring suit, we grant Northport's petition.

Facts and Procedural History

Sansing died on August 2, 2020, in Tuscaloosa County. In his will, he named Alphonso Duncan as the executor of his estate. On July 22, 2022 -- nearly two years after Sansing's death -- Duncan petitioned the Tuscaloosa Probate Court to probate Sansing's will and to appoint him as the personal representative of Sansing's estate. The probate court did not act on Duncan's petition.

One week later, on July 29, 2022, Anders filed an "Amended Petition for Letters of Administration ad Colligendum," asking the probate court to appoint him administrator ad colligendum "so that [he] may file a wrongful death lawsuit." That same day, the probate court

granted Anders's petition and named him as the "special administrator" of Sansing's estate. In its "Order Granting Letters of Administration ad Colligendum," the probate court authorized Anders "to collect and take into his possession the goods and chattels, monies, books, papers and evidence of debt of the deceased" until the probate court appointed a personal representative of the estate, at which time Anders's position would terminate.

On August 1, 2022, Anders commenced a wrongful-death action against Northport in the Tuscaloosa Circuit Court. In the complaint, Anders referred to himself as the "personal representative" of Sansing's estate and alleged that Sansing had died as a result of receiving substandard care while living in one of Northport's rehabilitation centers.

On September 9, 2022, Northport moved to dismiss the action. In its motion, Northport argued that because Anders had been appointed administrator ad colligendum -- not personal representative -- of Sansing's estate, he lacked authority under § 6-5-410 to bring a wrongful-death action. Because Anders lacked that authority, Northport argued, the circuit court never acquired subject-matter jurisdiction and the

lawsuit was a nullity. Further, Northport argued, since no properly appointed personal representative had initiated an action within the two-year limitations period, the cause of action was extinguished. The circuit court denied Northport's motion.

Northport then filed a petition for a writ of mandamus asking this Court to direct the circuit court to dismiss the action.

Standard of Review

A writ of mandamus is appropriate if the petitioner can show "1) a clear legal right … to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) [the] properly invoked jurisdiction of the court." Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). This Court has consistently held that these requirements can be met in cases in which someone other than a personal representative commences a wrongful-death action. See, e.g., Ex parte Bio-Medical Applications of Alabama, Inc., 216 So. 3d 420 (Ala. 2016); Ex parte Hubbard Props., Inc., 205 So. 3d 1211 (2016). In determining whether to grant mandamus relief, "this Court reviews issues of law de novo." Ex parte Terry, 957 So. 2d 455, 457 (Ala. 2006).

Analysis

Alabama's Wrongful Death Act, § 6-5-410, provides that only "[a] personal representative may commence an action" alleging wrongful death. § 6-5-410(a). The thrust of Northport's petition is that administrators ad colligendum are not "personal representatives." According to Northport, because Anders was appointed as an administrator ad colligendum, Anders could not bring the suit and the action was a nullity. And, Northport further asserts, because no properly appointed personal representative brought suit within the two-year limitations period in § 6-5-410, the cause of action was extinguished. See Ex parte FMC Corp., 599 So. 2d 592, 594 (Ala. 1992). We agree.

A. An Administrator ad Colligendum Is Not a "Personal Representative" Within the Meaning of § 6-5-410(a)

Section 6-5-410(a) provides that only a "personal representative" may bring a wrongful-death action, but it does not define who counts as one. "[W]hen a term is not defined in a statute, the commonly accepted definition of that term should be applied." Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003). In accordance with that principle, this Court has interpreted "personal representative" to "only mean the executor or administrator." Downtown Nursing Home,

Inc. v. Pool, 375 So. 2d 465, 466 (Ala. 1979) (emphasis added); see also Hatas v. Partin, 175 So. 2d 759, 761 (Ala. 1965) (same); accord Black's Law Dictionary 1557 (11th ed. 2019) (explaining that "personal representative" is either "an executor … named in a will" or "an administrator … not named in a will").

Executors and administrators serve the same function -- managing the estate of a decedent -- but are appointed differently. An executor can be appointed only by being named in the will of a decedent. § 43-2-20, Ala. Code 1975. On the other hand, the probate court can appoint an administrator when there is no will or the will does not name an executor. § 43-2-40, Ala. Code 1975. But a person cannot become an executor until the probate court issues letters testamentary; nor can a person become an administrator until the probate court issues letters of administration. Ex parte Smith, 619 So. 2d 1374, 1376 (Ala. 1993).

The upshot is that only an executor or an administrator to whom the probate court has issued letters testamentary or letters of administration may commence a wrongful-death action, and he or she must do so within two years of the decedent's death. Because an executor must be named in the decedent's will, and because Sansing did not name

Anders in his will, the only question here is whether Anders is an "administrator." And to answer that question, we must determine whether an administrator ad colligendum is an "administrator" such that he or she could bring a wrongful-death action as a personal representative under § 6-5-410(a).

An administrator ad colligendum is a "special administrator" whom a probate judge may appoint for "the specific purpose of collecting and preserving the assets of the estate when necessary." Ex parte Baker, 183 So. 3d 139, 143 (Ala. 2015). Section 43-2-47(a), Ala. Code 1975, limits that role in duration -- it ends when "letters testamentary or of administration have been duly issued." This Court has also interpreted that statute to limit the position's scope of authority, see Baker, 183 So. 3d at 143 (noting than an administrator ad colligendum "may take no action with regard to any estate matters other than what is permitted by § 43-2-47").

Consequently, unlike executors and administrators, an administrator ad colligendum cannot "initiate the general administration of [an] estate" or otherwise "deal with the duties and obligations of the administration of an estate." Id. Because of their "limited authority" as

mere officers of the probate court, administrators ad colligendum are neither "administrators" nor "executors" of a decedent's estate. Id. Accordingly, they are not "personal representatives" under § 6-5-410. And because they are not personal representatives, administrators ad colligendum cannot bring suit under the Wrongful Death Act.

Anders nonetheless argues that administrators ad colligendum should fall within the purview of Wrongful Death Act because this Court permitted an administrator ad litem, another type of special administrator, to prosecute a wrongful-death action in Affinity Hospital, L.L.C. v. Williford, 21 So. 3d 712 (Ala. 2009). Since administrators ad colligendum are likewise special administrators, Anders says, it follows that they can also bring wrongful-death actions.

Putting aside any relevant differences between the two types of special administrators, Anders's argument does not pass muster under the reasoning of Williford itself. The Williford Court reached the conclusion that it did only because neither party provided any authority "indicating that an administrator ad litem lack[ed] the power of a 'personal representative' for purposes of prosecuting a wrongful-death action." Id. at 718. And in the absence of any authority to the contrary,

the Court said it would not reverse the trial court's judgment on the issue. Id. But that reasoning has no relevance here, because Northport has pointed to authority -- both § 43-2-47 and our precedent -- indicating that administrators ad colligendum "lack[] the power of a 'personal representative.'" See Baker, 183 So. 3d at 143; accord Ex parte Continental Motors, Inc., 270 So. 3d 1148, 1159 (Ala. 2018) (holding that an administrator ad litem does not have the authority to pursue a wrongful-death claim because the defendant "presented argument and authority"); Golden Gate Nat'l Senior Care, LLC v. Roser, 94 So. 3d 365, 370 (Ala. 2012) (Bolin, J., concurring specially) (same).[1]

Anders also argues that § 43-2-47 does expressly permit administrators ad colligendum to prosecute wrongful-death actions because subsection (b) says that an administrator ad colligendum "may maintain civil actions as administrator" and a wrongful-death action is a "civil action." But in making this argument, Anders omits the

[1]Justice Bolin visited the issue again in Alvarado v. Estate of Kidd, 205 So. 3d 1188 (Ala. 2016), in which he wrote specially to emphasize that the Wrongful Death Act "grants to only a legally appointed personal representative, i.e., an administrator or an executor, the right to bring a wrongful-death action." 205 So. 3d at 1193 (Bolin, J., concurring specially).

immediately preceding phrase -- "for such purposes" -- which qualifies which "civil actions" an administrator ad colligendum "may maintain." The "purposes" to which the last clause refers are those laid out at the beginning of subsection (b): "collect[ing] the goods and chattels of the estate and debts of the deceased"; "giv[ing] receipts for moneys collected"; "satisfy[ing] liens and mortgages"; and "secur[ing] and preserv[ing] such goods and chattels." Id. In other words, an administrator ad colligendum may only maintain civil actions that further the execution of those particular duties.

Prosecuting a wrongful-death action "is not an 'act of administration.'" Bio-Medical Applications, 216 So. 3d at 424; see also Hicks v. Barrett, 40 Ala. 291, 293 (1866) (noting that commencing a wrongful-death action is "altogether distinct from the administration" of an estate). Rather than acting as an "agent of the probate court," Baker, 183 So. 3d at 143, a personal representative "'acts as agent of legislative appointment'" and functions as a "'quasi-trustee'" of any damages recovered. Bio-Medical Applications, 216 So. 3d at 424 (quoting United States Fid. & Guar. Co. v. Birmingham Oxygen Serv. Inc., 290 Ala. 149, 155, 274 So. 2d 615, 621 (1973)). Those damages are "'not subject to

administration'" because they "'do not become a part of the deceased's estate.'" Id.

In sum, a personal representative's function in a wrongful-death action does not approximate -- much less overlap with -- the administrator ad colligendum's stopgap role of "collecting and preserving the assets of the estate." Baker, 183 So. 3d at 143. Maintaining a wrongful-death action simply does not fall within the ambit of § 43-2-47(b).

B. The Probate Court's References to Anders as "Personal Representative" and Anders's Intent to Commence a Wrongful-Death Action Do Not Make Him a Personal Representative for Purposes of § 6-5-410(a)

Anders argues that even if administrators ad colligendum are not ordinarily personal representatives, he is a personal representative here because the probate court referred to him as both an administrator ad colligendum and a "personal representative" in its order granting his petition. Further, Anders says, because he made clear his intent to commence a wrongful-death action in his petition for letters of administration ad colligendum, the probate court's order implicitly granted him "broader powers," including the authority to commence a wrongful-death action. Anders's answer at 4.

Section 43-2-47 limits the authority of not only administrators ad colligendum but also the probate court, which may appoint those administrators only "to collect and preserve the goods of the deceased, until some one [else] is clothed with authority to administer them." Flora v. Mennice, 12 Ala. 836, 837 (1848); see also Little v. Gavin, 244 Ala. 156, 12 So. 2d 549 (1943) (holding that a probate court cannot enlarge the duties of a special administrator); Erwin v. Branch Bank at Mobile, 14 Ala. 307, 311 (1848) (same); Wolffe v. Eberlein, 74 Ala. 99, 107 (1883) (noting that the law, not the probate court, defines the duties of an administrator ad colligendum). Because a probate court may appoint an administrator ad colligendum only for the purposes listed in § 43-2-47, Baker, 183 So. 3d at 143-44, it does not matter that Anders sought appointment as an administrator ad colligendum for the purpose of commencing a wrongful-death action. Anders cannot somehow expand the scope of that position by premising his request on the desire to commence a wrongful-death action, and the probate court cannot grant him broader powers than what § 43-2-47 permits. See Underhill v. Mobile Fire Dep't Ins. Co., 67 Ala. 45, 50 (1880) (holding that even though the administrator ad colligendum sought -- and the trial court granted --

appointment to prosecute a conversion suit on behalf the decedent, "[t]he statute intervened" and limited the scope of the administrator ad colligendum's authority).

Nor does the probate court's scattered references to Anders as a "personal representative" in the order appointing him administrator ad colligendum transform Anders into a "personal representative" under the Wrongful Death Act. A "personal representative" as defined in the Probate Code, § 43-8-1 et seq., Ala. Code 1975, is not equivalent to a "personal representative" designated in the Wrongful Death Act. In contrast to the Wrongful Death Act, the Probate Code does define "personal representative," and it does so broadly: a "personal representative" can include an "executor, administrator, successor personal representative, special administrator" or any "persons who perform substantially the same function under the law governing their status." § 43-8-1(24).

In sum, what is sufficient to constitute a "personal representative" in probate court is not always sufficient to constitute a "personal representative" under the Wrongful Death Act; the two are not interchangeable. See Golden Gate, 94 So. 3d at 368 (Bolin, J., concurring

specially) (noting that appointment as an administrator ad litem "is not sufficient to show compliance with the legislative mandate for a personal representative in § 6-5-410"). As a plurality of this Court has explained, "[o]ne who sues under [the Wrongful Death Act] without having been appointed executor or administrator does not qualify … as a personal representative." Waters v. Hipp, 600 So. 2d 981, 982 (1992) (plurality opinion). The probate court did not appoint Anders as either. Consequently, Anders could not bring a wrongful-death action. And because Anders lacked authority to sue under § 6-5-410, his suit is a nullity. See Hubbard Props., supra.

C. The Relation-Back Doctrine Does Not Apply

As a last resort, Anders insists that he is merely acting as the personal representative until Duncan, the executor named in Sansing's will, receives letters testamentary from the probate court that would make him a "successor personal representative." Anders's answer at 12. To support his argument, Anders relies on the "relation-back" doctrine in § 43-2-831, Ala. Code 1975. That section provides that "[t]he powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to

appointment the same effect as those occurring thereafter." On Anders's interpretation, § 43-2-831 preserves the right of a "future named administrator" of Sansing's estate to prosecute the wrongful-death action because Anders's appointment as administrator ad colligendum, and his commencement of the wrongful-death action, occurred before the two-year limitations period in § 6-5-410 expired. Anders's answer at 11. If the probate court were to grant Duncan letters testamentary sometime in the future, Anders says, then Duncan would be able to prosecute the wrongful-death action because it would "relate back" to Anders's timely filed wrongful-death complaint, which was filed after Anders was appointed administrator ad colligendum. See id. at 11-12.

Anders's reliance on § 43-2-831 is misplaced. As this Court recently explained, that rule "generally cannot be used to prevent a wrongful-death claim from being time-barred where the personal representative is appointed after the two-year limitations period has expired." Alvarado v. Estate of Kidd, 205 So. 3d 1188, 1192 (Ala. 2016). That is because the plain language of § 43-2-831 limits the application of the rule to "acts by the person appointed which are beneficial to the estate." (Emphasis added.) A wrongful-death action, however, is not "beneficial to the

estate," id., because it is "not brought on behalf of the estate," Wood v. Wayman, 47 So. 3d 1212, 1218 (Ala. 2010), and "damages awarded in a wrongful-death action are not part of the decedent's estate," Alvarado, 375 So. 3d at 1191. For that reason, wrongful-death actions fall outside the scope of that doctrine.

To the extent that our cases have recognized an exception and allowed a wrongful-death action to proceed under the relation-back doctrine, that exception does not apply here. In Ogle v. Gordon, 706 So. 2d 707 (Ala. 1997) -- the case on which Anders relies -- this Court permitted a plaintiff's wrongful-death action to "relate back" to the date he filed a wrongful-death complaint, which he filed while his petition for letters testamentary was still pending, even though the probate court did not actually appoint him as personal representative until after the limitations period had run. Although the plaintiff had filed the petition just 4 months after his wife's death -- and had filed the wrongful-death complaint within the statutory limitations period -- the probate court waited over 27 months to appoint him personal representative, by which point the 2-year limitations period had expired. Because of the probate

court's unexplained delay, the Court permitted Ogle's appointment to relate back to the date he filed his wrongful-death complaint.

But our Court later explained that the Ogle "exception" only applied in those extreme cases in which the "dereliction" of the probate court causes the delay in the appointment of a personal representative. Wood, 47 So. 3d at 1217-19; see also Alvarado, 375 So. 3d at 1190-92. Those circumstances are not present here, where Duncan did not file his petition requesting letters testamentary until 11 days before the limitations period in § 6-5-410 expired. As in Alvarado -- where the executor named in the will filed a petition for letters testamentary six days before the two-year limitations period expired -- we cannot "rightly blame the probate court for 'inadvertence' or 'dereliction.'" 205 So. 3d at 1192 (quoting Ogle, 706 So. 2d at 711).[2] Consequently, the exception found in Ogle does not apply.

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[2]Anders does not purport to rely on the relation-back doctrine under Rule 15(c), Ala. R. Civ. P., which allows parties to file amended pleadings that "relate back" to their original pleading. But even if he did, that relation-back rule would also not apply because Anders brought suit without having ever been appointed a personal representative within the meaning of § 6-5-410. Because the suit was a "nullity" from its inception, there was no valid pleading to which to "relate back." See Downtown Nursing Home, Inc. v. Pool, 375 So. 2d 465, 466 (Ala. 1979) (holding that because the plaintiff "filed suit without having been appointed executor

Conclusion

Because Anders sued under § 6-5-410 "without having been appointed executor or administrator," he is not a proper party under the statute and "the suit is a nullity." Waters, 600 So. 2d at 982 (plurality opinion). Northport has shown a clear legal right to the writ of mandamus. We therefore grant Northport's petition and direct the circuit court to dismiss the complaint.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Wise, Bryan, Mendheim, Stewart, and Cook, JJ., concur.

Shaw, J., concurs in the result.

Sellers, J., concurs in the result, with opinion.

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or administrator," the wrongful-death suit was a "nullity" and the doctrine of relation back did not apply); Ex parte Hubbard Props., Inc., 205 So. 3d 1211, 1214 (Ala. 2016) (Shaw, J., concurring specially) (noting that because the wrongful-death "action was not properly commenced, the doctrine of relation back does not apply").

SELLERS, Justice (concurring in the result).

I concur in the result. Under current Alabama law, an administrator ad colligendum may not prosecute a wrongful-death action. See § 6-5-410, Ala. Code 1975. In Alabama, wrongful-death actions are purely statutory, and to pursue a wrongful-death action there must be, among other things, a personal representative duly appointed by a probate court, to whom letters testamentary or letters of administration have been issued. Pollard v. H.C. P'ship, 309 So. 3d 1189, 1201 (Ala. 2020) (Bolin, J., concurring specially). In my opinion, where, as here, a party challenges a plaintiff's capacity to pursue a wrongful-death action, this Court should look no further than to see whether letters testamentary or letters of administration were issued to the plaintiff to confirm his or her capacity. Letters testamentary and letters of administration are the unique legal documents vesting a personal representative with the authority to act on behalf of an estate. The status of personal representative can be bestowed by a probate court only through the granting of such letters. Absent the issuance of such letters, a wrongful-death action may not be maintained.