Rel: August 18, 2023

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2022-0934

Lydiah Njoki Mwangi

v.

Olivia Wakanyi Ndegwa, as administratrix of the Estate of Peter Ndegwa Gioko, deceased

Appeal from Jefferson Circuit Court
(CV-21-901933)

COOK, Justice.

This case arises out of a dispute over the administration of the

estate of the late Peter Ndegwa Gioko ("the decedent"). Lydiah Njoki Mwangi, the decedent's alleged common-law wife, and Olivia Wakanyi Ndegwa, the decedent's daughter, filed competing petitions to administer the decedent's estate in the Jefferson Probate Court. The probate court entered an order denying Mwangi's petition for letters of administration and granting Ndegwa's petition for letters of administration. Mwangi subsequently appealed to the Jefferson Circuit Court, which entered a judgment dismissing Mwangi's appeal for lack of subject-matter jurisdiction. Mwangi now appeals that judgment to this Court. Because we conclude that the circuit court erred in finding that it lacked subject-matter jurisdiction to consider Mwangi's appeal, we reverse the circuit court's judgment and remand the case for the circuit court to consider the merits of Mwangi's appeal.

Facts and Procedural History

The decedent died on February 12, 2021. On March 22, 2021, Mwangi petitioned the probate court for letters of administration, alleging that she was the decedent's wife at the time of his death. The probate court issued letters of administration to Mwangi that same day.

On March 23, 2021, Ndegwa filed an ex parte petition in the probate

court seeking an order revoking Mwangi's letters of administration and issuing letters of administration to her as the decedent's next of kin.[1] Later that day, without conducting a hearing, the probate court entered an order revoking the letters of administration previously issued to Mwangi. The probate court, however, declined to grant Ndegwa's request for letters of administration, instead setting both Mwangi's and Ndegwa's petitions for letters of administration for a hearing on March 31, 2021.[2] After Mwangi moved to continue that hearing, the probate

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[1]Section 43-2-42, Ala. Code 1975, determines who has priority to be appointed as administrator of a decedent's estate. Pursuant to § 43-2-42(a), the decedent's "husband or widow" is first in the statutorily prescribed order of priority, followed by the decedent's next of kin. According to Ndegwa, Mwangi was not the wife, common-law or otherwise, of the decedent.

Section 30-1-20, Ala. Code 1975, provides that no common-law marriage may be entered into in Alabama on or after January 1, 2017, but preserves the status of an otherwise valid common-law marriage entered into before January 1, 2017. Attached to Ndegwa's ex parte petition were documents indicating that the decedent had legally divorced his first wife, Virginia Wanjiru Kamendi, on December 18, 2013, had legally married Martha Ngonyo Gitau on May 28, 2014, and then had legally divorced Gitau on July 22, 2019. Ndegwa argued that, because common-law marriage was abolished in Alabama as of January 1, 2017, the decedent could not have entered into a common-law marriage with Mwangi following his July 2019 divorce from Gitau.

[2]As the probate court explained in a subsequent order, that court, "by its Order Revoking Letters of Administration dated March 23, 2021,

court granted a continuance and rescheduled the hearing for April 20, 2021.

On April 18, 2021, Mwangi filed her response to Ndegwa's ex parte petition.[3] Following the hearing, on April 28, 2021, the probate court entered an order denying Mwangi's petition for letters of administration and granting Ndegwa's petition for letters of administration. That day, Mwangi filed a motion to alter, amend, or vacate the probate court's order. On June 1, 2021, after considering Mwangi's motion, the probate court issued a revised and amended order that again denied Mwangi's petition for letters of administration and granted Ndegwa's petition for

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revoked Letters of Administration that had been issued to Ms. Mwangi, reserving the matter of appointment of successor Letters of Administration (or reinstatement of Letters of Administration to Ms. Mwangi) for hearing."

[3]In that response, Mwangi acknowledged that common-law marriages are no longer recognized in Alabama unless entered into before January 1, 2017, but contended that she and the decedent had entered into a common-law marriage following his December 2013 divorce from Virginia Wanjiru Kamendi and before his May 2014 marriage to Martha Ngonyo Gitau. Mwangi further alleged that the decedent's marriage to Gitau was a sham marriage entered into for the purpose of circumventing immigration laws. Mwangi argued that, because the decedent's marriage to Gitau was fraudulent or void, that marriage should be disregarded by the probate court for the purpose of determining whether Mwangi was the decedent's wife at the time of his death. Mwangi attached various exhibits in support of her response.

letters of administration. On July 6, 2021, Mwangi appealed to the circuit court.

On August 11, 2021, Ndegwa filed a combined motion to dismiss and a response to Mwangi's appeal. As grounds for dismissal of Mwangi's appeal, Ndegwa asserted (1) that Mwangi's appeal was untimely pursuant to § 12-22-21(3), Ala. Code 1975, (2) that Mwangi had failed to post a bond as required by §§ 12-22-24 and 12-22-25, Ala. Code 1975, (3) that Mwangi had failed to have the record from the probate court certified or filed with the circuit court, and (4) that Mwangi lacked statutory standing to bring the appeal. Ndegwa additionally argued that Mwangi's appeal lacked merit because the evidence and testimony presented to the probate court supported the probate court's determination that Mwangi was not the decedent's common-law wife.

On August 26, 2021, Mwangi petitioned the probate court to certify the record of the proceedings in the probate court and to set a bond amount. Shortly thereafter, she filed a response to Ndegwa's motion to dismiss. In that response, Mwangi asserted that, pursuant to § 12-22-21(2), her appeal had been timely filed within 42 days of the entry of the probate court's revised and amended order. In addition, Mwangi stated

that her petition requesting that the probate court certify the record and set a bond amount was pending in the probate court and that, in any event, the filing of security or a bond was not a jurisdictional prerequisite pursuant to § 12-22-25. Mwangi alternatively requested that the circuit court set the amount of the bond or security. Lastly, Mwangi denied that she lacked statutory standing to bring the appeal, noting that § 12-22-21(2) expressly authorizes appeals from an "order on an application claiming the right to … administer an estate."

On September 13, 2021, the probate court entered an order that certified the record to the circuit court but that did not set a bond amount. A hearing on the motion to dismiss took place on October 22, 2021. On March 2, 2022, while Ndegwa's motion to dismiss was still under consideration by the circuit court, the circuit court issued a scheduling order setting the case for trial in September 2022 and establishing a discovery cutoff date of July 10, 2022.

Following the entry of that scheduling order, Mwangi served Ndegwa with a set of discovery requests. On June 9, 2022, Ndegwa filed an objection to those discovery requests, arguing that § 12-22-21 does not allow for a trial de novo in the circuit court and that, as a result, Mwangi

was not permitted to conduct discovery.

On June 22, 2022, approximately 10 months after Ndegwa had filed her motion to dismiss, the circuit court entered an order granting Ndegwa's motion and dismissing Mwangi's appeal for lack of subject-matter jurisdiction.

Mwangi subsequently filed a Rule 59(e), Ala. R. Civ. P., motion to alter, amend, or vacate the circuit court's judgment. A hearing on that motion was set for September 14, 2022. Following that hearing, the circuit court entered an order denying Mwangi's Rule 59(e) motion. Mwangi now appeals to this Court.

Standard of Review

This Court applies the following standard of review to a judgment of dismissal based on a lack of subject-matter jurisdiction:

> "'A ruling on a motion to dismiss is reviewed without a presumption of correctness. This Court must accept the allegations of the complaint as true. Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader will ultimately prevail but whether the pleader may possibly prevail.'
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> "Newman v. Savas, 878 So. 2d 1147, 1148-49 (Ala. 2003) (citations omitted). 'Matters of subject-matter jurisdiction are subject to de novo review.' DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011)."

Poiroux v. Rich, 150 So. 3d 1027, 1033 (Ala. 2014).

Discussion

On appeal to this Court, Mwangi contends that the circuit court erred in granting Ndegwa's motion to dismiss. Before we address the merits of Mwangi's contention, we must first clarify the nature of her appeal to the circuit court. The circuit court's judgment granting Ndegwa's motion to dismiss characterized the appeal filed by Mwangi as seeking "a reversal of the [p]robate [c]ourt's order revoking [l]etters of [a]dministration previously granted to … Mwangi." The record, however, establishes that Mwangi's appeal challenged both (1) the probate court's March 23, 2021, order revoking of her letters of administration and (2) the probate court's June 1, 2021, revised and amended order denying her petition for letters of administration. Thus, we read Mwangi's appeal to the circuit court as seeking review of two separately appealable orders of the probate court.

In its order denying Mwangi's Rule 59(e) motion, the circuit court asserted four independent grounds for dismissing Mwangi's appeal: (1) that Mwangi lacked statutory standing to appeal the probate court's orders; (2) that Mwangi had failed to timely appeal the probate court's

order revoking her letters of administration; (3) that Mwangi had failed to post bond as required by § 12-22-24; and (4) that Mwangi had failed to timely file a certified record of the proceedings in the probate court. On appeal to this Court, Mwangi challenges all four of the circuit court's grounds for dismissal. After careful review, and for the reasons discussed below, we conclude that the circuit court erred in dismissing Mwangi's appeal on those grounds.

I. Statutory Standing

As noted, the circuit court dismissed Mwangi's appeal for, among other reasons, her lack of statutory standing. Section 12-22-21 creates a statutory right to appeal from certain orders, judgments, or decrees of a probate court. Specifically, § 12-22-21 provides, in pertinent part:

> "Appeal from the order, judgment or decree of the probate court may be taken by the party aggrieved to the circuit court or Supreme Court in the cases hereinafter specified. Appeals to the Supreme Court shall be governed by the Alabama Rules of Appellate Procedure, including the time for taking an appeal. Appeal to the circuit court in such cases shall be within the time hereinafter specified:
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> "....
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> "(2) From the decree, judgment or order on an application claiming the right to execute a will or administer an estate, to be taken within 42 days after the hearing and decision of such application,

> unless the application was denied because the applicant was deemed unfit to serve by reason of a conviction of an infamous crime or by reason of improvidence, intemperance or want of understanding, in which case the appeal must be taken within seven days from the denial of the application."

(Emphasis added.) Thus, pursuant to § 12-22-21, a "party aggrieved" by a probate court's "decree, judgment or order on an application claiming the right to … administer an estate" may appeal the probate court's decision to the circuit court.

Mwangi's petition for letters of administration alleged that, as the decedent's surviving wife, Mwangi was entitled to be appointed administrator of the decedent's estate in accordance with § 43-2-42, Ala. Code 1975. Thus, the probate court's June 1, 2022, revised and amended order denying Mwangi's petition for letters of administration qualifies as an "order on an application claiming the right to … administer an estate." § 12-22-21(2). The circuit court, however, nevertheless concluded that Mwangi lacked statutory standing to appeal the probate court's order because she did not qualify as a "party aggrieved" for the purposes of § 12-22-21. Thus, the determination whether Mwangi is a "party aggrieved" within the meaning of § 12-22-21 is dispositive as to whether

she had statutory standing to appeal the probate court's order to the circuit court.

The Legislature has not defined the term "party aggrieved," as used in § 12-22-21, and this Court has also not interpreted that term in the context of § 12-22-21. Black's Law Dictionary 1122 (6th ed. 1990), however, defines the term "party aggrieved" as follows:

> "Under statutes permitting any party aggrieved to appeal, [a party aggrieved] is one whose right has been directly and injuriously affected by action of the court. Singer v. Allied Factors, 216 Minn. 443, 13 N.W.2d 378, 380 [(1944)]. One whose pecuniary interest in subject matter of an action is directly and injuriously affected or whose right of property is either established or divested by complained of decision. Whitman v. Whitman, Okl., 397 P.2d 664, 667 [(1964)]."

(Emphasis added.) Other jurisdictions, such as Minnesota, that have addressed a similar question have held that

> "statutory language which provides for appeals from the probate to the district court by those who may be aggrieved by an order of the probate court is … broad enough to cover anyone who has come properly before the probate court and is the losing party as the result of an adverse ruling or order."

Gabel v. Ferodowill, 254 Minn. 324, 334, 95 N.W.2d 101, 103 (1959); see also Kinghorn v. Clay, 153 Idaho 462, 465, 283 P.3d 779, 782 (2012) ("Thus, in order to have the right to appeal, one must satisfy two requirements: first, one must be a party, and second, one must be

'aggrieved.'"); Tillinghast v. Brown Univ., 24 R.I. 179, 183-84, 52 A. 891, 892 (1902) ("The rule generally adopted in construing statutes on this subject is that a party is aggrieved by the judgment or decree when it operates on his rights of property, or bears directly upon his interest.").

Here, Mwangi was a party of record in the probate-court proceedings, and there is no basis for concluding that she was not properly before the probate court in seeking letters of administration.[4] It is also undisputed that the probate court denied Mwangi's petition for letters of administration. The issue in dispute, therefore, is whether Mwangi had a pecuniary interest or a legally protected right that was adversely affected by the probate court's order denying her petition.

According to the circuit court, Mwangi had no such interest or right because she was "neither an heir at law nor a devisee" of the decedent and did "not stand to benefit or inherit from [the decedent's] estate in any way." Crucially, however, the determination by the circuit court that Mwangi was not a "party aggrieved" by the probate court's order was

[4]The Alabama Code does not expressly limit the class of persons authorized to petition the probate court for letters of administration. Section 43-2-42(a)(4), Ala. Code 1975, moreover, authorizes the appointment of "[a]ny other person as the judge of probate may appoint."

necessarily based on the probate court's finding that Mwangi was not the surviving wife of the decedent -- the very subject of Mwangi's appeal to the circuit court.[5]

In determining whether a party to the proceedings in the probate court is aggrieved for the purposes of § 12-22-21, we ask whether the party has claimed a legally protected right or interest in the decedent's estate and whether the probate court's decision adversely affects that right or interest.[6] In Ex parte Creel, 719 So. 2d 783 (Ala. 1998), moreover,

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[5]The circuit court concluded that Mwangi was an "unrelated party as evidenced by her own admissions and the findings of the Probate Court in its March 23rd Order." (Emphasis added.) The record before this Court, however, establishes that Mwangi consistently alleged that she was "the lawful common[-]law wife" of the decedent in her submissions to the circuit court.

The facts and law related to Mwangi's statutory standing to appeal the probate court's orders were in dispute, and resolving that dispute would have required the circuit court to consider the merits of the probate court's determination that Mwangi was not the surviving spouse of the decedent. The circuit court, however, did not reach the merits of the probate court's order denying Mwangi's petition, expressly stating that it had "no basis by which to assess the validity of the arguments on appeal or to make a determination thereon."

[6]Although we have not previously addressed this precise issue, this inquiry is consistent with how other jurisdictions have analyzed a party's statutory standing to appeal an adverse decision of the probate court. See, generally, Ciglar v. Finkelstone, 142 Conn. 432, 435, 114 A.2d 925, 927 (1955) ("[A]n allegation in the motion for appeal that the appellant

this Court noted that "a judgment of the probate court holding that a common law marriage does, or … does not, exist carries with it the safeguard of either removal or appeal to the circuit court, as guaranteed by [Ala. Code 1975,] § 12-11-41 and … §§ 12-22-20 and -21, respectively." Id. at 786 (emphasis added). In the present case, the circuit court interpreted § 12-22-21 as conferring statutory standing on a party to appeal from a probate court's "order on an application claiming the right to … administer an estate" only when the probate court has determined that the appealing party is an heir at law or devisee of the decedent. This construction, however, would effectively defeat the purpose of § 12-22-21, which, as explained in Ex parte Creel, creates a right to appeal "a judgment of the probate court holding that a common law marriage does, or … does not, exist …." Id. at 786. We do not believe that the Legislature intended for a probate court's determination as to the existence of a common-law marriage to cut off a party's statutory right to appeal an

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is an heir at law is adequate to satisfy the [statutory] requirement … that the interest of the appellant which has been adversely affected be set forth."); Department of Income Maint. v. Watts, 211 Conn. 323, 326, 558 A.2d 998, 1000 (1989) ("[T]he test is whether there is a possibility, as distinguished from a certainty, that some legally protected interest that he has in the estate has been adversely affected.").

adverse decision of the probate court based on that determination.

Here, Mwangi has claimed that she has a right, pursuant to § 43-2-42, to administer the decedent's estate as his surviving wife. There is no question that the probate court's denial of Mwangi's petition for letters of administration adversely affected that purported right. See § 43-2-42(a) (giving a decedent's surviving husband or wife first priority to administer the decedent's estate). Moreover, Mwangi's purported "right of property … [was also] divested," Black's Law Dictionary, supra, at 1122, by the probate court's determination that she was not the decedent's surviving wife. See § 43-8-41, Ala. Code 1975 (providing that surviving spouse is entitled to a share of the decedent's intestate estate). For these reasons, § 12-22-21 authorized Mwangi's appeal to the circuit court, and the circuit court erred in dismissing Mwangi's appeal for lack of statutory standing.

II. Timeliness of Appeal

Section 12-22-21 also sets forth the relevant periods in which to appeal certain probate-court orders to a circuit court. As relevant here, § 12-22-21(2) requires an appeal from an "order on an application claiming the right to … administer an estate[ ] to be taken within 42 days

after the hearing and decision of such application." Section 12-22-21(3) further provides that an appeal from an "order removing an … administrator … must be taken within seven days after such … order."

As a ground for dismissing Mwangi's entire appeal, the circuit court concluded that Mwangi had failed to timely appeal the probate court's order revoking her letters of administration. According to the circuit court, because the probate court's order revoking Mwangi's letters of administration was "effective immediately," the time for appealing that order expired seven days after the probate court's entry of that order on March 23, 2021. Because Mwangi commenced her appeal to the circuit court on July 6, 2021, long after the expiration of the seven-day limitations period in § 12-22-21(3), the circuit court dismissed Mwangi's appeal as untimely.

On appeal to this Court, Mwangi asserts that the probate court's March 23, 2021, order revoked her letters of administration in an ex parte proceeding and reserved the matter of reinstatement of those letters for a later hearing. As a result, Mwangi contends that the March 23, 2021, order was not a final order and that the seven-day period for appealing the revocation did not begin until the probate court entered the April 28,

2021, order denying her petition for letters of administration. Mwangi additionally argues that her Rule 59(e) motion to alter, amend, or vacate the April 28, 2021, order, filed that same day, tolled the seven-day period for appealing the probate court's revocation of her letters of administration. Moreover, because the revised and amended order entered by the probate court on June 1, 2021, constituted a ruling on the Rule 59(e) motion, Mwangi argues that she had seven days from the entry of the revised and amended order in which to appeal the probate court's revocation.

Even accepting Mwangi's contention that she could appeal the revocation of her letters of administration within seven days of the probate court's entry of the June 1, 2021, order, however, Mwangi filed her appeal challenging the June 1, 2021, order on July 6, 2021 -- 35 days after that order was entered. Thus, to the extent that Mwangi's appeal to the circuit court sought review of the probate court's order finalizing her removal as administratrix of the decedent's estate, the circuit court correctly determined that it lacked subject-matter jurisdiction to review that removal because Mwangi's appeal was commenced more than seven days after the probate court's entry of the revised and amended order on

June 1, 2021.

However, as noted at the outset of this discussion, Mwangi's appeal to the circuit court challenged more than the probate court's revocation of her letters of administration. In her appeal, Mwangi additionally challenged the probate court's denial of her petition for letters of administration, arguing that the probate court's ruling that she was not the decedent's common-law wife was "contrary to the evidence presented" and "based on an error of law." Section 12-22-21(2) permits a party to appeal a probate court's order denying his or her "application claiming the right to… administer an estate" within 42 days of the entry of that order. Here, Mwangi's appeal to the circuit court was commenced 35 days after the entry of the probate court's order denying her petition for letters of administration. Thus, although the circuit court is correct that it could not consider Mwangi's untimely appeal of her removal as the administratrix of the decedent's estate, the circuit court could nevertheless properly exercise subject-matter jurisdiction over Mwangi's appeal insofar as that appeal sought review of the probate court's denial of Mwangi's petition for letters of administration. For this reason, the circuit erred in dismissing the entirety of Mwangi's appeal as untimely.

III. Failure to Post Bond

Pursuant to § 12-22-24(a), Ala. Code 1975, "[n]o appeal can be taken from any order of the probate court removing an executor or administrator unless the applicant gives either a cash bond or a bond with at least two good and sufficient sureties." Thus, to perfect an appeal from a probate court's order revoking letters of administration, the appealing party must post the required bond within the seven-day period set forth in § 12-22-21(3). Rogers v. Hansen, 187 So. 3d 1108, 1111 (Ala. 2015).

In all other appeals from the probate court, however, § 12-22-25 requires the appellant to "give security for the costs of such appeal, to be approved by the probate judge or the clerk of the circuit court," but expressly states that "the filing of security for costs is not a jurisdictional prerequisite." See also Elsworth v. Rini, 388 So. 2d 953, 955 (Ala. 1980) ("We agree with the appellant that § 12-22-25 … provides that the appellant in such cases must give security for the cost of the appeal, but as he concedes, the filing of the security for cost is not a jurisdictional prerequisite.").

The circuit court dismissed Mwangi's entire appeal based on her

failure to satisfy the jurisdictional bond requirement in § 12-22-24. However, to the extent that Mwangi's appeal arose from the probate court's denial of her petition for letters of administration, § 12-22-25, and not § 12-22-24, was controlling. Pursuant to § 12-22-25, a party's failure to give security for costs within the 42-day period for appealing a probate court's order denying a petition for letters of administration is not a jurisdictional defect. Thus, Mwangi's failure to give security for costs of the appeal did not deprive the circuit court of subject-matter jurisdiction over the portion of Mwangi's appeal seeking review of the probate court's denial of her petition for letters of administration. For this reason, the circuit court erred in concluding that § 12-22-24 mandated dismissal of Mwangi's entire appeal.

IV. Certification of the Record

Finally, the circuit court dismissed Mwangi's appeal based on her failure to timely file a certified record of the proceedings before the probate court "as is required by law." Significantly, however, the circuit court did not reference, and we have not found, any applicable statute or rule requiring a party appealing a probate court's order pursuant to § 12-22-21(2) to submit a certified record of the probate-court proceedings.

Because the statutory provisions governing Mwangi's appeal do not impose on an appealing party any duty to ensure that the certified record is prepared and transmitted to the circuit court, the circuit court erred in concluding that Mwangi's failure to provide a certified record within the 42-day limitations period set forth in § 12-22-21(2) was a ground for dismissing her appeal.[7]

Conclusion

Because the circuit court did not lack subject-matter jurisdiction to review the probate court's order denying Mwangi's petition for letters of administration, we reverse the circuit court's judgment of dismissal and remand the cause to the circuit court to consider the merits of Mwangi's appeal.

On remand, the circuit court should consider the record and the applicable law to determine whether the probate court correctly entered an order denying Mwangi's petition for letters of administration and granting Ndegwa's petition for letters of administration. We express no

[7]The record before us, moreover, establishes that, at the time the circuit court dismissed Mwangi's appeal in June 2022, the record from the probate court had been certified to the circuit court for approximately nine months.

opinion on the merits of that order but note that the standard of review to be applied by the circuit court should be the ore tenus standard. Thus, the probate court's factual findings should be presumed correct and should "be overturned only if clearly erroneous or manifestly unjust." Craig v. Perry, 565 So. 2d 171, 175 (Ala. 1990).[8]

REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.

[8]Furthermore, "when testimony is before the trial court and is considered by the trial court in reaching its decision, and this testimony is not in the record, either in a transcript or in a Rule 10(d)[, Ala. R. App. P.,] statement, it must be presumed that the testimony was sufficient to support the judgment." Browning v. Carpenter, 596 So. 2d 906, 908 (Ala. 1992).