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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2022-0903

Phyllis Grimmer

v.

**Robert Williams, individually and as personal representative of
the Estate of Mary M. Williams, deceased**

**Appeal from Houston Circuit Court
(CV-19-900554)**

COOK, Justice

Phyllis Grimmer appeals the summary judgment entered by the

Houston Circuit Court ("the circuit court") in favor of her brother, Robert Williams, individually and as the personal representative of the estate of their late mother, Mary M. Williams ("Mary"). Specifically, the circuit court entered a summary judgment in favor of Williams on count five of his complaint against Grimmer, which sought a judgment declaring that, under § 26-2A-152, Ala. Code 1975, Grimmer, as the conservator of Mary's estate, was not authorized to make "transfer on death" ("TOD") beneficiary designations on Mary's financial accounts. Although the circuit court certified its judgment as final pursuant to Rule 54(b), Ala. R. Civ. P., as explained below, that certification was improper, and this appeal is due to be dismissed.

Facts and Procedural History

Grimmer and Williams are Mary's only children. In April 2014, Mary left her home in South Carolina and moved into Grimmer's home in Dothan. In November 2014, Grimmer filed a petition in the Houston Probate Court ("the probate court") in which she sought to be appointed as her mother's guardian and conservator. After the probate court granted Grimmer temporary letters of guardianship over Mary, Mary contested the requested guardianship and conservatorship.

In March 2015, the probate court denied Grimmer's petition for guardianship but appointed Grimmer as conservator of Mary's estate. Following the probate court's denial of Grimmer's guardianship petition, Mary returned to South Carolina. In South Carolina, Mary amended her will and trust to specifically exclude Grimmer and initiated a court proceeding in the Probate Court of Abbeville County, South Carolina ("the South Carolina probate court"), to determine her competency.

While acting as conservator of Mary's estate, Grimmer established a conservatorship account with Ameriprise Financial Services, Inc. ("Ameriprise"). Grimmer liquidated the assets in three of Mary's brokerage accounts and transferred those funds, totaling approximately \$460,000, to the conservatorship account. At the time that she established the conservatorship account, Mary also executed a TOD agreement, which designated Grimmer and Williams each as TOD beneficiaries entitled to 50% of the assets held in that account.

In September 2015, the South Carolina probate court issued an order in which it found that Mary was not an incapacitated person. In January 2016, the South Carolina probate court issued a supplemental order in which it stated that Mary was not in need of a conservator.

Williams, acting as next friend of Mary, continued to contest Grimmer's appointment as conservator of Mary's estate in Alabama.

In May 2017, the conservatorship proceeding was removed from the probate court to the circuit court pursuant to § 26-2-2, Ala. Code 1975. In July 2017, Williams moved to terminate the conservatorship or, in the alternative, to relinquish jurisdiction of the conservatorship proceeding to the South Carolina probate court. Williams additionally moved to remove Grimmer as conservator.

On March 1, 2018, the circuit court issued a provisional order of removal directing Grimmer to petition the South Carolina probate court to appoint a neutral third party as the conservator of Mary's estate. In that same order, the circuit court also stated that it would issue a final order relinquishing jurisdiction over the conservatorship proceeding to the South Carolina probate court once the circuit court received a provisional order from the South Carolina probate court accepting the proceeding.

On March 25, 2018, before any final order could be issued, Mary died. Following Mary's death, Williams was appointed as the personal representative of her estate.

In April 2018, Williams moved the circuit court to freeze the conservatorship funds and to compel a final settlement of Mary's conservatorship estate. That same month, Grimmer petitioned for a final settlement of the conservatorship estate and filed a final accounting of the conservatorship, to which Williams objected. Grimmer thereafter filed two amended final accountings of the conservatorship.

In August 2018, while the conservatorship proceeding was pending in the circuit court, Williams, individually and as the personal representative of Mary's estate, commenced a civil action against Grimmer in the circuit court ("the first civil action"), alleging breach of fiduciary duty, unjust enrichment, fraudulent misrepresentation, willful misrepresentation, and tortious interference with an inheritance. In support of his claims, Williams alleged, among other things, that Grimmer had depleted estate assets when she spent approximately \$113,000 of conservatorship funds on unnecessary expenses.¹ Grimmer filed a motion to dismiss the first civil action, which the circuit court

¹In the complaint, Williams additionally alleged, "upon information and belief discovered following [Mary's death]," that the conservatorship account "still had Grimmer and Williams listed as 50%-50% beneficiaries of the account."

granted in March 2019.

In June 2019, Grimmer filed a third amended final accounting in the conservatorship proceeding. Williams objected to the approval of the final settlement and final accounting, alleging that Grimmer had not acted in Mary's best interest when she had depleted the conservatorship estate by incurring unnecessary litigation expenses. On August 22, 2019, at the final-settlement hearing in the conservatorship proceeding, Grimmer clarified that she had established the conservatorship account with Ameriprise and admitted that, as conservator, she had designated herself and Williams as TOD beneficiaries on that account.

In September 2019, Williams filed a second complaint against Grimmer and Ameriprise² in the circuit court ("the second civil action") containing five counts. In that complaint, Williams sought a judgment declaring that, under § 26-2A-152, Grimmer, as Mary's conservator, was not authorized to make TOD beneficiary designations on Mary's financial accounts and alleged breach of fiduciary duty, unjust enrichment, fraudulent misrepresentation, and willful misrepresentation based on

²After closing the conservatorship account and depositing the account proceeds into the circuit court's registry, Ameriprise was dismissed from the second civil action in August 2020.

Grimmer's conduct in designating herself as a TOD beneficiary.

In November 2019, the circuit court entered a judgment approving the final settlement in the conservatorship proceeding. Specifically, the circuit court concluded (1) that Grimmer had properly discharged the duties and functions of a conservator and (2) that the "conservatorship funds were properly invested in the conservatorship account."

In May 2021, Williams moved for a partial summary judgment in the second civil action on the counts alleging breach of fiduciary duty and unjust enrichment and seeking a declaratory judgment. In May 2022, the circuit court entered a partial summary judgment in favor of Williams on the count seeking a judgment declaring that § 26-2A-152 did not authorize Grimmer, in her capacity as the conservator of Mary's estate, to make beneficiary designations on the conservatorship account and that any beneficiary designations made by Grimmer were void ab initio. The circuit court additionally directed the clerk of the court to transmit the balance of funds on deposit in the circuit court's registry to Williams. The circuit court, however, denied summary judgment on the counts alleging breach of fiduciary duty and unjust enrichment.

Grimmer subsequently filed a motion for reconsideration. After the

circuit court denied Grimmer's motion, it certified the partial summary judgment in favor of Williams as final pursuant to Rule 54(b), Ala. R. Civ. P. Grimmer timely appealed.

Discussion

On appeal, Grimmer challenges the circuit court's summary judgment in favor of Williams on the declaratory-judgment count, arguing (1) that Williams's declaratory-judgment claim was barred by res judicata, (2) that the circuit court erred in concluding that § 26-2A-152 did not authorize her to designate TOD beneficiaries on Mary's conservatorship account, and (3) that the circuit court lacked jurisdiction to determine issues related to the conservatorship.

Although neither party has contested this Court's jurisdiction to decide this appeal or addressed the propriety of the circuit court's certification of finality pursuant to Rule 54(b) in their briefs on appeal, it is well settled that this Court is "'duty bound to notice ex mero motu the absence of subject-matter jurisdiction.'" Baldwin Cnty. v. Bay Minette, 854 So. 2d 42, 45 (Ala. 2003) (quoting Stamps v. Jefferson Cnty. Bd. of Educ., 642 So. 2d 941, 945 n.2 (Ala. 1994)). Accordingly, before this Court can reach the merits of Grimmer's arguments on appeal, we must first

determine whether the circuit court properly certified its partial summary judgment in favor of Williams as final under Rule 54(b). See Loachapoka Water Auth., Inc. v. Water Works Bd. of Auburn, 74 So. 3d 419, 422 (Ala. 2011) (recognizing that, without subject-matter jurisdiction, this Court has no authority to consider the merits of an appeal).

Generally, this Court may exercise jurisdiction only over final judgments. See Taylor v. Taylor, 398 So. 2d 267, 269 (Ala. 1981) ("It is a well established rule that ... an appeal will lie only from a final judgment which determines the issues before the court and ascertains and declares the rights of the parties involved."). Rule 54(b) provides a limited exception to this general principle. In pertinent part, Rule 54(b) states that, "[w]hen more than one claim for relief is presented in an action," a court "may direct the entry of a final judgment as to one or more but fewer than all of the claims" if the court expressly determines "that there is no just reason for delay." As relevant here, Rule 54(b) operates to certify an order resolving a single claim as final in actions involving multiple claims and "'does not authorize the entry of a final judgment on part of a single claim.'" Certain Underwriters at Lloyd's, London v. Southern Nat. Gas

Co., 939 So. 2d 21, 27 (Ala. 2006) (quoting Precision Am. Corp. v. Leasing Serv. Corp., 505 So. 2d 380, 381 (Ala. 1987)).

Thus, to properly certify an order as final under Rule 54(b), a trial court must determine (1) that the action involves more than one claim, (2) that the order completely adjudicates at least one claim, and (3) that "no just reason for delay" exists. See Committee Comments on 1973 Adoption of Rule 54(b), Ala. R. Civ. P.

Whether a separate claim has been fully adjudicated for the purposes of Rule 54(b) presents a challenging question, and this Court has recognized that "[n]either federal nor state courts have been able to settle on a single test to determine when claims are separate or exactly what constitutes a claim." Precision Am. Corp., 505 So. 2d at 381 (citing Tolson v. United States, 732 F.2d 998, 1001 (D.C. Cir. 1984)).

However, although this Court has declined to adopt a single test, in determining whether a claim resolved by an order certified as final pursuant to 54(b) is distinct and separate from those that have yet to be adjudicated, we have previously considered whether the adjudicated and unadjudicated claims (1) arise from the same factual bases, (2) involve common legal issues, and (3) seek distinct forms of relief that can be

separately enforced. See Scrushy v. Tucker, 955 So. 2d 988, 998 (Ala. 2006) (explaining that "[t]he ultimate determination of multiplicity of claims must rest in every case on whether the underlying factual bases for recovery state a number of different claims which could have been separately enforced" (quoting Rieser v. Baltimore & Ohio R.R., 224 F.2d 198, 199 (2d Cir. 1955)); Ex parte National Ins. Underwriters, 366 So. 2d 687, 689-90 (Ala. 1978) (stating that, in the context of Rule 54(b), "'claim' refers to a set of facts giving rise to legal rights in the claimant, and not mere legal theories of recovery based upon those facts")

Here, the complaint filed by Williams contained five counts, but asserted only one claim. The adjudicated declaratory-judgment count and the counts still pending in the circuit court all stem from the same set of operative facts -- namely, that Grimmer, in her role as the conservator of Mary's estate, designated herself as a 50% percent TOD beneficiary on the conservatorship account and, following Mary's death, failed to transmit the funds in that account to Mary's estate.

The five counts also involve a common legal issue: whether § 26-2A-152 authorized Grimmer to designate herself as a TOD beneficiary.³ For instance, because conservators are bound by the fiduciary duties imposed in § 26-2A-152, see Edward D. Jones & Co., LP v. Ventura, 907 So. 2d 1035, 1041 (Ala. 2005), to determine whether Grimmer breached her fiduciary duty or was unjustly enriched in this case, the circuit court would need to address the threshold issue of whether Grimmer failed to meet the statutory requirements set forth in § 26-2A-152.⁴

³Williams's summary-judgment motion expressly stated that the "singular issue for [his declaratory-judgment, breach-of-fiduciary-duty, and unjust-enrichment counts] is the fact that ... Grimmer had no legal authority to designate herself as beneficiary of funds for which she was charged with protection as conservator for Mary"

⁴Moreover, the circuit court's summary judgment in favor of Williams on the declaratory-judgment count made clear that its determination of the legality of Grimmer's TOD beneficiary designations was inextricably bound to Williams's allegation of unjust enrichment against Grimmer, stating as follows:

"To allow [Grimmer] to designate herself as a beneficiary and to ultimately collect and convert to her personal use any of the [conservatorship] funds would, as [Williams] argues, allow [Grimmer] to illegally enrich herself and circumvent the provisions of her mother's will. To the extent that any beneficiary designations such as the ones at issue here are designed and intended to divert funds from a ward's estate to a conservator's personal use, such designations are improper and illegal. In this case, the only purpose of the beneficiary

In terms of the remedies sought by Williams, the adjudicated declaratory-judgment count asked the circuit court to strike the beneficiary designations on the conservatorship account and to order that the funds in that account be immediately delivered to him. The remaining counts still pending in the circuit court seek "damages in the amount of the funds in the ... [conservatorship] account, plus interest and costs." Thus, the relief sought under the adjudicated count -- although declaratory in nature -- substantially overlaps with the relief sought under the counts still pending in the circuit court. See Lloyd Noland Found., Inc. v. Tenet Health Care Corp., 483 F.3d 773, 780 (11th Cir. 2007) ("[E]ven if a district court has adjudicated one count of a complaint, but another count seeks substantially similar relief, the adjudication of the first count does not represent a 'final judgment' because both counts are functionally part of the same claim under Rule 54(b)[, Fed. R. Civ. P.]"); Grantham v. Vanderzyl, 802 So. 2d 1077, 1080 (Ala. 2001) ("An

designations as established by [Grimmer] was to cause one-half of the [conservatorship] funds to be provided to her for her personal use. Therefore, the court finds that the said designations are void and contrary to law, and the court hereby strikes the said designations."

(Some emphasis in original; some emphasis added.)

order is not final if it permits a party to return to court and prove more damages or if it leaves open the question of additional recovery." (citing Precision Am. Corp., 505 So. 2d at 382).

In Ex parte Vanderwall, 201 So. 3d 525, 530 (Ala. 2015), this Court considered a trial court's Rule 54(b) certification of an order resolving a declaratory-judgment count and stated as follows:

"A trial court's determination upon a request by an injured party for a declaration as to what law or legal principles govern the injured party's claims against an alleged wrongdoer, even if that request is framed as a separate 'count' in a complaint, is rarely, if ever, appropriate for certification as a final judgment under Rule 54(b). This is clearly so when there remain pending in the wake of any such determination claims by the plaintiff against the defendant for monetary, injunctive, or other relief based upon that law and the set of facts to which that law is claimed to be applicable. In such a case, the determination as to applicable law is but a subsidiary step on the path to the full adjudication of the plaintiff's cause of action against the alleged wrongdoer."

(Emphasis added.)

In this case, the counts that remain pending in the circuit court (1) seek monetary relief and (2) depend on the circuit court's determination of the scope of Grimmer's statutory powers and duties as conservator. Thus, the adjudicated count seeking a declaratory judgment is not factually or legally separable from the remaining counts but is instead "a

subsidiary step on the path to the full adjudication" of Williams's singular claim arising from Grimmer's designation of herself as a TOD beneficiary on the conservatorship account. Id.

As noted previously, Rule 54(b) "'does not authorize the entry of final judgment on part of a single claim." Certain Underwriters at Lloyd's, London, 939 So. 2d at 27 (citation omitted); Haynes v. Alfa Fin. Corp., 730 So. 2d 178, 181 (Ala. 1999) ("[F]or a Rule 54(b) certification of finality to be effective, it must fully adjudicate at least one claim"). Because the circuit court's summary judgment in favor of Williams only partially disposed of a single claim, the circuit court improperly certified its judgment as final pursuant to Rule 54(b). Accordingly, Grimmer's appeal is due to be dismissed as having been taken from a nonfinal judgment. Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004) ("A nonfinal judgment will not support an appeal.").⁵

Conclusion

Because the circuit court's Rule 54(b) certification was improper, we dismiss the appeal.

⁵Given our resolution of the foregoing issue, we need not address the other arguments made by the parties.

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APPEAL DISMISSED.

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