

Rel: June 16, 2023

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2022-1054

Bill Wayne Hilyer

v.

Donald Glenn Hilyer

**Appeal from Chilton Circuit Court
(CV-21-7)**

SELLERS, Justice.

Bobby Gene Hilyer, Sr. ("the decedent"), a resident of Chilton County, died testate in June 2019; he was survived by his wife, Cecelia Hilyer, and his children, Donald Glenn Hilyer and Bill Wayne Hilyer.

The Chilton Probate Court issued letters testamentary to Donald, appointing him as the personal representative of the decedent's estate. Donald subsequently petitioned the Chilton Circuit Court to remove the administration of the estate from the probate court to the circuit court. In the removal petition, Donald alleged that the circuit court could better handle the estate administration because, he averred, his brother Bill had taken items of significant value from the estate, thus requiring an order directing the return of those items.

On March 10, 2021, the circuit court entered an order, properly removing the administration of the decedent's estate from the probate court to the circuit court. Donald requested that the circuit court amend its order to direct the return of specific items that he alleged Bill had taken from the estate. On March 22, 2021, the circuit court entered an amended order directing the return of estate assets. That order (1) listed 17 specific estate items "in the possession" of Bill at his address in Rome, Georgia, and (2) directed that "any authorized deputy of the Sheriff of Floyd County, Georgia [is] to assist" Donald "in taking" those items from Bill's possession. Although the circuit court indicated in a subsequent order that the court had been advised that the March 22, 2021, order was

"being domesticated in Georgia for execution," there is no indication in the record that the order was in fact properly domesticated or that any action was taken to recover the estate assets.

On July 27, 2021, Donald filed a petition requesting that the circuit court accept his "Final Accounting and Settlement" of the decedent's estate. In that petition, Donald provided, among other things, a list of "remaining" estate assets, including real estate located in Chilton County, a "2015 Toyota Camry ... in the possession of [Bill] ... never returned to Estate," and "items removed by [Bill] which ... were never returned to the possession of the personal representative to be restored to the Estate." On September 15, 2021, following a hearing, the circuit court entered a judgment approving the final settlement and discharging Donald as the personal representative of the decedent's estate. No postjudgment motion was filed challenging that judgment.

On August 16, 2022, 11 months after being discharged as the personal representative of the decedent's estate, Donald filed a motion in the circuit court seeking to hold Bill in contempt for his failure to comply with the March 22, 2021, order directing the return of assets to the estate. On October 26, 2022, Donald filed another motion in the circuit court

seeking a hearing concerning monetary damages for the value of the estate items he claimed Bill had converted to his own use. In response to Donald's motions, the circuit court purported to enter (1) an order, dated September 26, 2022, concerning the "balance of claims" and (2) a judgment, dated November 22, 2022, in favor of the decedent's estate and against Bill in the amount of \$100,000. Bill appealed. We note that Donald did not favor this Court with an appellee's brief.¹ See United Sec. Life Ins. Co. v. Dupree, 41 Ala. App. 601, 602-03, 146 So. 2d 91, 93 (1962) ("Where the appellant submits the cause on brief and no brief is filed by the appellee, the court considers the cause on its merits on the assumption that appellee is interested in having the judgment sustained.").

¹When Donald failed to file an appellee's brief, our clerk's office issued a deficiency notice requiring him to file a brief, along with a motion to accept the brief as timely, by March 20, 2023. Donald attempted to comply; however, both his brief and the motion to accept the brief as timely failed to comply with the Rules of Appellate Procedure. Our clerk's office conditionally granted Donald's motion to accept the brief as timely, provided that Donald file a set of replacement briefs (no later than March 30, 2023) complying with our appellate rules -- specifically, Rule 25A(a), Rule 28(a)(2), Rule 28(a)(4), Rule 28(a)(5), Rule 28(a)(7), Rule 28(a)(11), and Rule 32(d). Donald failed to submit a set of compliant briefs. On May 4, 2023, our clerk's office issued an order denying Donald's motion to accept his original brief as timely and striking the brief.

On appeal, Bill asserts that the September 15, 2021, judgment approving the final settlement and discharging Donald as the personal representative of the decedent's estate became a final judgment after the passage of 30 days and that the circuit court, therefore, lost jurisdiction to enter any further orders or judgments in the matter. See George v. Sims, 888 So. 2d 1224, 1227 (Ala. 2004) ("Generally, a trial court has no jurisdiction to modify or amend a final order more than 30 days after the judgment has been entered, except to correct clerical errors. See Rule 59(e) and Rule 60, Ala. R. Civ. P."). Because the issue presented involves only a pure question of law, our standard of review is de novo. Watson v. University of Alabama Health Serv. Found., 263 So. 3d 1030, 1033 (Ala. 2018).

As previously indicated, Donald petitioned the circuit court for a final settlement of the decedent's estate. Following a hearing, the circuit court entered the September 15, 2021, judgment, which states, in relevant part, (1) that the personal representative had marshaled all the assets of the estate, (2) that there was "now on hand" all the assets subject to distribution under the decedent's will, (3) that all the beneficiaries of the will had consented to the final settlement, and (4)

that "subject to all the foregoing and payments and distributions [Donald] is finally discharge[d] and relieved [as personal representative] and this final settlement is taken as passed and filed and approved by this Court." (Emphasis added.) The September 15, 2021, judgment was a final judgment; it closed the decedent's estate and fully discharged and released Donald from his responsibilities as the personal representative. We note that the judgment does state that "there is an order entered by this Honorable Court for the return of property removed from the estate unlawfully." However, nothing in the judgment expressly holds the decedent's estate open for any reason or limits the court's discharge and release of Donald as the personal representative of the estate. Rather, the judgment clearly reflects that the "final settlement" submitted by Donald had been approved. "The term 'final settlement' signifies that 'nothing remain[s] to be done by an administrator or by the court in the settlement of [the] estate.'" Boyd v. Franklin, 919 So. 2d 1166, 1173 (Ala. 2005) (quoting Stevens v. Tucker, 87 Ind. 109, 115 (1882)). Moreover, once a personal representative has been discharged and relieved of the duties regarding the administration of an estate, the personal representative no longer has any authority to act on behalf of the estate.

See Watson, 263 So. 3d at 1033 (noting that the personal representative of an estate, after being discharged and released of his duties, no longer had the capacity to initiate a wrongful-death action); see also Humphrey v. Boschung, 47 Ala. App. 310, 315, 253 So. 2d 760, 765 (Civ. 1970) ("It appears axiomatic that one who may act only upon authority of a court appointment, may not continue to act after such authority has terminated"). Because the September 15, 2021, judgment was a final judgment that discharged Donald as the personal representative of the decedent's estate, he no longer had the authority to take any further action on the estate's behalf. Furthermore, because more than 30 days had elapsed since the entry of the September 15, 2021, judgment, the circuit court had no jurisdiction to enter the September 26, 2022, order and the November 22, 2022, judgment; thus, they are void. Based on the foregoing, we reverse and remand with instructions to the circuit court to vacate the September 26, 2022, order and the November 22, 2022, judgment.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Wise and Stewart, JJ., concur.

Parker, C.J., and Cook, J., concur in the result.