

Rel: June 26, 2020

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Ex parte Nancy T. Beamon

PETITION FOR WRIT OF MANDAMUS

(In re: Bruce Allen Arnott

v.

**Nancy T. Beamon, as personal representative of the Estate of
Lois P. Arnott)**

(Washington Circuit Court, CV-18-900071)

WISE, Justice.

Nancy T. Beamon, personal representative of the estate of Lois P. Arnott, the defendant below, filed a petition for a writ of mandamus requesting that we order the Washington

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Circuit Court to dismiss the complaint filed against her by Bruce Allen Arnott, the plaintiff below. We grant the petition and issue the writ.

Facts and Procedural History

Donovan Arnott, Jr., was married to Lois P. Arnott. The two were residents of Lee County, Georgia. Bruce is the son of Donovan and Lois. Lois had two children from a prior marriage, Beamon and John Edward Terry. Donovan adopted Beamon but did not adopt Terry.

Donovan died testate on May 1, 2014. At the time of his death, Donovan owned a house and two lots located in Clarke County, Alabama; a 488-acre tract of land in Washington County, Alabama, known as the "Atchison tract"; a tract of land in Clarke County, Alabama, known as "the Smith tract"; and another tract of land in Clarke County, Alabama, known as "the Taylor tract." His will was probated in Lee County, Georgia. In his will, Donovan left the house and two lots located in Clarke County to Lois. Donovan's will also provided, in pertinent part:

"I, give, devise, and bequeath to my beloved wife, LOIS P. ARNOTT, if she shall survive me, a life estate in and to all of my other real estate, together with the right to cut any and all timber

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located thereon as needed as long as the cutting practice is in accordance with the acceptable forestry practice with provisions made for timber regeneration in accordance with acceptable forestry practices."

Donovan devised a remainder fee-simple interest in the Atchison tract to Bruce; a remainder fee-simple interest in the Smith tract to Beamon; and a remainder fee-simple interest in the Taylor tract to Terry.

Lois died testate on July 22, 2017, and her will was probated in the probate court of Lee County, Georgia ("the Georgia court"). Beamon was the executor of Lois's will. The Georgia court issued letters testamentary to Beamon on November 1, 2017.

On October 30, 2018, Bruce, a resident of Clarke County, Alabama, filed a complaint in the circuit court of Washington, County, Alabama ("the circuit court"). The complaint named Beamon as the defendant, stating:

"Defendant, Nancy T. Beamon, at all times material to this matter was serving in her capacity as personal representative under the ancillary administration in Clarke County, Alabama, of the estate of Lois P. Arnott, which was filed on August 8, 2018 (see Affidavit of E. Tatum Turner, attached)."

In his complaint, Bruce alleged:

"10. During 2016, Lois P. Arnott, as the life tenant of the Atchison Tract, had the timber on the 488 acre Atchison Tract in Washington County, Alabama clear cut, with such action completed in November 2016.

"11. During the remainder of her life following the clear-cutting of the Atchison Tract, Lois P. Arnott took no steps to satisfy her timber regeneration obligation under Item Three of Donovan Arnott, Jr.'s will.

"12. It is understood in the forestry industry that it is normal practice after the clear-cutting of property to delay timber regeneration for a year or so to allow time for preliminary steps such as site preparation.

"13. Lois P. Arnott's obligation under Item Three of Donovan Arnott, Jr.'s will to regenerate/reforest the Atchison Tract following its clear-cutting, for the benefit of Plaintiff Bruce Allen Arnott, the owner of the remainder interest in the Atchison Tract, survived Lois P. Arnott's death.

"14. Lois P. Arnott's timber regeneration obligation passed to Lois's estate, and more specifically to the ancillary administration of her estate in Clarke County, Alabama, with the will also filed in Washington County, Alabama (see Affidavit of E. Tatum Turner).

"15. The obligation of the timber regeneration of the Atchison Tract passed to Lois P. Arnott's estate.

"16. As the personal representative of Lois P. Arnott's estate under the ancillary administration of the estate in Alabama, including the Atchison Tract in Washington County, Alabama, Defendant Nancy T. Beamon was responsible for carrying out the timber regeneration of the Atchison Tract.

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"17. Now that nearly two years has passed since the completion of the clear-cutting of the Atchison Tract in November 2016, no timber regeneration has been commenced on the property by Defendant Nancy T. Beamon in her capacity as personal representative of Lois P. Arnott's estate.

"18. Representations have been made by Attorney Greg Fullerton, representing Defendant Nancy T. Beamon in her capacity as personal representative of Lois P. Arnott's estate in Washington County, Alabama, to the effect that payment was forthcoming to cover the cost of timber regeneration.

"19. No such payment, full or partial, has been made and none appears to be likely."

On December 5, 2018, Beamon filed a motion to dismiss the complaint on the basis that the circuit court did not have subject-matter jurisdiction over the claims. In her motion to dismiss, Beamon asserted:

"In regard to the administration of an estate, the probate court is a court of general and original jurisdiction. Ala. Const. 1901, § 144; Ala. Code 1975, § 12-13-1(b); Dubose v. Weaver, 68 So. 3d 814, 821 (2011). A 'circuit court cannot initiate the administration of an estate, because the initiation of administration is a matter exclusively in the jurisdiction of the probate court.' Ex parte Smith, 619 So. 2d 1374, 1376 (1993) (emphasis added)."

She went on to assert that there had not been any administration of Lois's estate in Washington County; that Lois's will had not been admitted to probate in Washington County; and that letters testamentary had not been granted in

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Washington County. She further asserted that no petition or document regarding the administration of Lois's estate had been filed in Washington County. Thus, she asserted that the administration of Lois's estate in Washington County had not yet commenced and that the circuit court did not have jurisdiction over the complaint. Beamon further argued that, even if the circuit court were to assume that the administration of Lois's estate had commenced in Washington County, the circuit court still did not have jurisdiction.

Beamon asserted:

"A circuit court may only obtain jurisdiction over a pending administration of an estate by removing the administration from the probate court to the circuit court pursuant to Ala. Code 1975, § 12-11-[4]1. Code Section 12-11-41 provides:

"'The administration of any estate may be removed from the probate court to the circuit court at any time before a final settlement thereof, by any heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, without assigning any special equity; and an order of removal must be made by the court, upon the filing of a sworn petition by any such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, reciting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the

will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court.'

"Hence, in order for the Court to have subject-matter jurisdiction over the above-styled matter, a petition to remove the administration of Ms. Arnott's estate must have been filed and the Court must have entered an order of removal prior to the filing of the Plaintiff's Complaint. Ala. Code [1975,] § 12-11-[4]1, Dubose v. Weaver, 68 So. 3d [814,] 821-22 [(Ala. 2011)] ('[T]he filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over the administration of an estate') (citations omitted).

"Here, neither Plaintiff nor any other interested party has filed a petition for removal. Moreover, this Court has not entered an order purporting to remove the administration of Ms. Arnott's estate from the Washington County Probate Court. Accordingly, the Court lacks jurisdiction over the administration of Ms. Arnott's estate and, more specifically, the Plaintiff's Complaint."

Bruce filed a response to Beamon's motion to dismiss and also filed a response to the caselaw cited by Beamon. In his response to the motion to dismiss, Bruce stated that he did not contest the accuracy of Beamon's assertion that no documents regarding Lois's will or estate had been filed in Washington County and Beamon's assertion that neither she nor any other person had been appointed the personal

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representative of an ancillary estate for Lois by any probate court in Alabama. Bruce went on to assert:

"The Plaintiff herein, conceding that the filing of Ms. Arnott's will in Clarke County, Alabama does not count as an ancillary administration in that jurisdiction, accepts the Defendant's position that no administration of Ms. Arnott's estate has been undertaken in Alabama.

"Moreover, the Plaintiff does not assert this Court's jurisdiction is based on an interest held by Ms. Arnott at the time of her death in real property with a situs in Washington County, the Atchison Tract. It is clear that Ms. Arnott's interest in the Atchison Tract was a life estate that therefore terminated at her death. It is the Plaintiff's contention that the absence of any proceeding for the administration of Ms. Arnott's estate in Alabama is irrelevant to the viability of the Plaintiff's cause of action. Rather, this suit is a straightforward action to recover on a claim against Lois P. Arnott's estate, which, as stated above, is based on the Defendant's breach of her fiduciary duty in her capacity as executrix of Lois P. Arnott's estate to satisfy Lois's obligation to carry out the timber regeneration of the Atchison Tract following Lois's clear cutting of the property.

"Focusing on the issue of subject matter jurisdiction, the failure of the Defendant to perform the obligation of timber regeneration constituted a wrongdoing that affected real property, the Atchison Tract, with a situs in Washington County. The obligation was for the benefit of the remainderman, the Plaintiff, the party to whom the Defendant owed the fiduciary duty of timber regeneration. The Defendant's failure to satisfy her obligation must be viewed as resulting in damage to the property, a point that confirms the

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idea that the Plaintiff's cause of action seeking recovery for this damage has no direct relationship to the administration of Lois P. Arnott's estate."

On June 27, 2019, Beamon filed a supplement to her motion to dismiss and a reply to Bruce's response. Beamon pointed out that Bruce had conceded that there was no ancillary administration of Lois's estate but the complaint named her as if there was an ancillary administration. She further pointed out that, in his response to the caselaw she had cited, Bruce had stated that he was "seeking satisfaction of that claim from the estate" and that "Lois's estate is involved solely for the limited purpose of serving as a source of compensation for the breach of Lois's duty [as] life tenant of Atchison Tract to reforest the property." Beamon argued that the only estate that existed was Lois's estate in Georgia and that any claim against Lois's estate must be brought in Georgia. Beamon further argued:

"5. Lastly, the Plaintiff attempts to distinguish all of the cases cited in support of Defendant's motion, but yet, fails to provide this court with a single case where jurisdiction was allowed over an executor appointed in a foreign state. Furthermore, the case of Jefferson v. Beall, 117 Ala. 436 (Ala. 1897), specifically states, '... an administrator, or executor, is not suable in a foreign jurisdiction as he has no commission beyond the State line.' Likewise, in Hatchett v. Berney,

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65 Ala. 39 (Ala. 1880), the Alabama Supreme Court stated, '... an executor, or administrator ... can not sue, or be sued, in his representative capacity, in any other state or country than that from which the letters were derived.' In the present case, Ms. Beamon's letters were derived from the State of Georgia and any claim against her must be brought against the estate of Lois P. Arnott in Georgia. Ms. Beamon has no authority to take any action in Alabama."

On July 2, 2019, Bruce filed an amended complaint. In the style of the case, Bruce named Beamon "both in her capacity as Executor of the Will of Lois P. Arnott and in her individual capacity." He went on to state:

"2. Defendant, Nancy T. Beamon, at all times material to this matter, was serving in her capacity as Executor of the Will of Lois P. Arnott, who died testate in Lee County, Georgia on July 22, 2017.

".....

"15. Lois P. Arnott's timber regeneration obligation passed to Lois's estate, and more specifically to Defendant Nancy T. Beamon as the Executor of Lois P. Arnott's Will, with the will also probated as a foreign will in Clarke County, Alabama.

"16. The obligation of the timber regeneration of the Atchison Tract passed to Lois P. Arnott's estate.

"17. As the Executor of Lois P. Arnott's will and thus as the personal representative of Lois P. Arnott's estate including the Atchison Tract in Washington County, Alabama, Defendant Nancy T. Beamon was responsible for carrying out the timber regeneration of the Atchison Tract.

"18. Now that nearly two years has passed since the completion of the clear-cutting of the Atchison Tract in November 2016, no timber regeneration has been commenced on the property by Defendant Nancy T. Beamon in her capacity as personal representative of Lois P. Arnott's estate.

"19. Nancy T. Beamon's failure to carry out the reforestation of the Atchison Tract was not a failure to satisfy that obligation as part of her duties to administer the assets of Lois P. Arnott's because, since Lois P. Arnott died owning only a life estate in the Atchison Tract, that property was not an asset of Lois P. Arnott's estate.

"20. Because the reforestation obligation required the Defendant Nancy T. Beamon to take action in her capacity as administrator of Lois P. Arnott's estate that was separate from her duties to administer the disposition of the assets of Lois's estate and required the Defendant's action in her own right, the Defendant's failure to satisfy the obligation was also a breach of the reforestation obligation in her individual capacity.

". . . .

"23. Defendant Nancy T. Beamon, as the personal representative of Lois P. Arnott's estate, has the fiduciary duty to see to the fulfillment of Lois P. Arnott's obligation under Item Three of Donovan Arnott, Jr.'s Will as to the reforestation/timber regeneration of the Atchison Tract.

"24. Because the carrying out of the reforestation obligation was beyond the Defendant's duties as administrator of Lois P. Arnott's estate as they pertained to Lois's assets, the Defendant also had a duty to carry out the reforestation obligation in her individual capacity.

"25. Defendant Nancy T. Beamon's duty to see to the timber regeneration of the Atchison Tract both

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in her fiduciary and individual capacities was owed to Plaintiff Bruce Allen Arnott as the owner of the remainder interest in the Atchison Tract under Item Six of Donovan Arnott, Jr.'s will.

"26. By not seeing to the performance of Lois P. Arnott's timber regeneration obligation under Item Three of Donovan Arnott, Jr.'s will, Defendant Nancy T. Beamon has breached her fiduciary duty owed to Plaintiff Bruce Allen Arnott as the individual to whom the Defendant's fiduciary duty was owed.

"27. By not securing the performance of the timber regeneration of the Atchison Tract, Defendant Nancy T. Beamon also in effect breached the general fiduciary duty that she had as the successor to Lois P. Arnott's fiduciary duty as a life tenant of the Atchison Tract owed to the remainderman, Plaintiff Bruce Allen Arnott, to ensure the proper maintenance and upkeep of the property and to not allow any diminution in the value of the property."

(Emphasis added.)

On July 12, 2019, Beamon filed a "Motion to Dismiss Plaintiff's Amended Complaint for Lack of Subject Matter Jurisdiction, Lack of Personal Jurisdiction and Failure to State a Claim upon Which Relief May Be Granted."

On July 24, 2019, Bruce filed a response to Beamon's motion to dismiss his amended complaint, in which he asserted:

"3. The Plaintiff does not question the point that the Defendant's fiduciary status and authority as Executor of Lois P. Arnott's Will is derived from the Defendant's appointment as such by the Probate Court for Lee County, Georgia. The Plaintiff, however, here restates the argument that he made at page 7 of his Response to Defendant's Supplement to

Defendant's Motion to Dismiss Complaint that, under the present circumstances, this Court should not adhere strictly to the statement of the standard rule as to the limitation of jurisdiction over an estate fiduciary because (1) the Defendant, to the extent that she is being sued in this jurisdiction in her fiduciary capacity, is not being sued in the context of her fiduciary duties regarding the administration of Lois P. Arnott's estate. Rather, she is being sued here on the basis of her failure to perform the duty to which she succeeded upon Lois P. Arnott's death to see to the reforestation/timber regeneration of the Atchison Tract, property located in this County, property which was not an asset of Lois's estate; and (2) as pointed out at page 8 of his Response to Defendant's Supplement, if this Court does not accept jurisdiction of this case, it is virtually certain that the Plaintiff will not be able to find any forum that would accept jurisdiction of his cause of action, it is safe to assume that the Probate Court for Lee County, Georgia would not accept jurisdiction over an action seeking compensation for damage suffered by real property having a situs in Washington County, Alabama."

On August 21, 2019, the circuit court entered an order denying Beamon's motion to dismiss. Beamon filed her petition for a writ of mandamus asking this Court to direct the circuit court to enter an order dismissing the complaint against her, and this Court ordered answer and briefs.

Standard of Review

"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to

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perform, accompanied by a refusal to do so;
(3) the lack of another adequate remedy;
and (4) properly invoked jurisdiction of
the court.'

"Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Flint Constr. Co., 775 So. 2d 805 (Ala. 2000)."

Ex parte Huntingdon Coll., [Ms. 1180148, March 27, 2020] ____
So. 3d ____, ____ (Ala. 2020).

"A ruling on a motion to dismiss is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002). 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. Nance, 622 So. 2d at 299."

Newman v. Savas, 878 So. 2d 1147, 1148-49 (Ala. 2003).

Discussion

Beamon argues that the circuit court lacks subject-matter jurisdiction over this matter and that it lacks personal jurisdiction over her because the letters testamentary were issued by the Georgia court and because no ancillary administration has been filed in Alabama.

"It seems to be settled by the weight, if not by an unbroken concurrence, of judicial authority, that a judgment rendered in a foreign jurisdiction against

a domiciliary personal representative is void, whether objection is or is not made to the exercise of jurisdiction by the foreign court, and whether the judgment is against the same or a different representative.

"The accepted theory of administration is that the right and liability is purely representative, and exists only by force of the official character, and so cannot pass beyond the jurisdiction which grants it, and reserves to itself full and exclusive authority over all the assets of the estate within its limits. Braithwaite v. Harvey, 27 L[awy]. R[ep]. A[nn]. 101 and notes [(1894)]; Reynolds v. Stockton, 140 U.S. 254 [(1891)]; Hopper v. Hopper, 125 N.Y. 400; [26 N.E. 457;] 12 L[awy]. R[ep]. A[nn]. 237 [(1891)]; Johnson v. Wallis, 112 N.Y. 230; [19 N.E. 653;] 2 L[awy]. R[ep]. A[nn]. 828 [(1889)]; Robinson v. Robinson, 11 Ala. 947 [(1847)]; Harrison v. Mahorner, 14 Ala. [829,] 834 [(1848)]; Hatchett v. Berney, 65 Ala. 39 [(1880)]."

"The record affirmatively shows in this case that appellant sued and obtained the judgment against the defendants, describing them as executors, and that the present suit is upon such judgment against them, in the same capacity, in this state. The only complication or difficulty in the case arises from the fact that both suits are against the same persons who would in ordinary cases be concluded by an adverse judgment. But in this class of cases the defendant is not personally a party, otherwise than as a commissioned representative of the court making the appointment, and for the limits of its jurisdiction, so that beyond that jurisdiction he can exercise no authority, or do or omit any act which will affect the due administration of the trust by the local authorities.

"The objection thus goes to the power or jurisdiction of the court over the subject-matter of the administration of assets in a foreign State, in

the control of foreign administrators, and to the capacity of the defendant to do any act to the prejudice of the domestic administration. Consent can not give such jurisdiction, or extend the limited authority of the administration to extra-territorial acts resulting in judgments against the assets of the estate. The domestic representative has no authority to prosecute or defend suits in foreign jurisdictions, except by the permission and authority of the particular state, and only as to assets there located. In Hatchett v. Berney, supra, we announced the general rule as follows: 'It is the settled doctrine of this court, and of the common law, that letters testamentary, or of administration, have no extra-territorial operation, and title derived from them extends, as matter of right, only to the personal assets which are found within the jurisdiction of the government from which they are derived.' And it follows from this, an administrator, or executor, is not suable in a foreign jurisdiction -- as he has no commission beyond the State line. There was, therefore, no jurisdiction in the court of Georgia to entertain the suit resulting in the judgment against the appellees as executor and executrix, by and under the laws of Alabama; and the judgment rendered in such a suit is entirely void, and thus can not support an action in this State against the same or other administrators."

Jefferson v. Beall, 117 Ala. 436, 439-40, 23 So. 44, 44-45 (1897) (emphasis added).

In this case, Lois's will was probated in Georgia, and the letters testamentary appointing Beamon as the executor of that estate were issued by the Georgia court. Further, no ancillary administration of Lois's estate has been filed in Alabama.

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In the style of his amended complaint, Bruce named Beamon "both in her capacity as Executor of the Will of Lois P. Arnott and in her individual capacity." However, he went on to allege:

"2. Defendant, Nancy T. Beamon, at all times material to this matter, was serving in her capacity as Executor of the Will of Lois P. Arnott, who died testate in Lee County, Georgia on July 22, 2017."

In his amended complaint, Bruce also alleged:

"Because the reforestation obligation required the Defendant Nancy T. Beamon to take action in her capacity as administrator of Lois P. Arnott's estate that was separate from her duties to administer the disposition of the assets of Lois's estate and required the Defendant's action in her own right, the Defendant's failure to satisfy the obligation was also a breach of the reforestation obligation in her individual capacity."

Bruce's claims in this case are based on his assertion that Lois's obligation to reforest the Atchison tract at the appropriate time passed to her estate. Thus, any payment for such reforestation would involve Beamon's payments from the assets of Lois's estate. In fact, Bruce concedes that he is seeking compensation for the reforestation from Lois's estate. Thus, his assertion that the reforestation obligation "was separate from [Beamon's] duties to administer the disposition of the assets of Lois's estate" is without merit.

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In his brief to this Court, Bruce asserts:

"[T]he purpose of the action is to establish the Defendant's breach of her fiduciary duty to see to the reforestation of the Atchison Tract, property with a situs in Washington County, Alabama. Only when such liability is established would the Georgia probate court having jurisdiction over the administration of Lois's estate become involved to the extent of satisfying the claim from Lois's estate based on the Defendant's breach."

However, when the allegations in Bruce's complaint are read as a whole, it is clear that he is not alleging that Beamon had an independent obligation regarding the reforestation of the Atchison tract. Rather, her only duty was the duty she owed as the executor of Lois's estate. Further, Bruce's argument makes it clear that he is not attempting to establish Beamon's personal liability for the reforestation or seeking any relief from her personally for any alleged breach of her fiduciary duty. Rather, he is seeking to establish his claim against the estate so that that claim can be satisfied from the assets of the estate.

Based on the foregoing, it is clear that Bruce's claim is, in actuality, a claim against Lois's estate and that he is actually suing Beamon in her capacity as the executor of Lois's estate. However, Beamon, in her capacity as the executor of Lois's estate, has no authority to defend a suit

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in Alabama because the letters testamentary appointing her were issued by the Georgia court. See Jefferson, supra. Therefore, the circuit court did not have subject-matter jurisdiction over claims against Beamon in her capacity as the executor of Lois's estate. Accordingly, it erred when it denied Beamon's motion to dismiss the claims against her.

Conclusion

For the above-stated reasons, we grant Beamon's petition for a writ of mandamus and direct the circuit court to enter an order granting Beamon's motion to dismiss the complaint against her.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., concurs in the result.