Rel: December 21, 2018

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1171089

Ex parte Mary Chmielewski, as personal representative of the Estate of Yvonne Speer Hoover, deceased; Grace Ellis; and Roger Stone

PETITION FOR WRIT OF MANDAMUS

(In re: Tere Mills

v.

Grace Ellis and Roger Stone)

(Baldwin Circuit Court, CV-18-900261)

SELLERS, Justice.

Mary Chmielewski, as personal representative of the estate of Yvonne Speer Hoover, deceased; Grace Ellis; and Roger Stone petition this Court for a writ of mandamus directing the Baldwin Circuit Court ("the circuit court") to vacate an order purporting to set aside its earlier dismissal of a will contest. We grant the petition and issue the writ.

Hoover executed a will in May 2017. Hoover's will designated Tere Mills as a beneficiary of Hoover's estate. A codicil to Hoover's will was executed shortly before Hoover died in July 2017. The codicil eliminated Mills as a beneficiary of Hoover's estate and added Ellis and Stone as beneficiaries. After Hoover died, her will, along with the codicil, was admitted to probate in the Baldwin Probate Court ("the probate court"), and letters testamentary were issued to Chmielewski. Thereafter, pursuant to § 43-8-199, Ala. Code 1975, Mills filed a petition in the circuit court contesting the validity of Hoover's will, as amended by the codicil.

In support of her assertion that the codicil was invalid, Mills alleged in her petition that Stone and Ellis had unduly influenced Hoover to execute the codicil, that Hoover lacked the capacity to understand the effect of the codicil, that

Hoover's signature on the codicil had been forged, that Stone and Ellis had committed a fraud on the probate court by testifying to the validity of the codicil, and that Ellis had engaged in the unauthorized practice of law by allegedly drafting the codicil. Based on those averments, Mills requested the circuit court to "determine whether said document is the codicil of the decedent."

The will-contest petition indicates that it was formally served only on Stone and Ellis. Nevertheless, on March 23, 2018, Chmielewski and Ellis filed a joint motion to dismiss Mills's petition.[1] In support of their motion to dismiss, Chmielewski and Ellis argued that Mills had failed to join all parties required by § 43-8-200, Ala. Code 1975, which provides, in part, that, in the event of a will contest, "all parties interested in the probate of the will, as devisees, legatees or otherwise, as well as those interested in the testator if he had died intestate, as heirs, distributees or next of kin, shall be made parties to the contest."

[1]Mills's response to the mandamus petition in this case appears to suggest that the motion to dismiss was filed solely by Chmielewski. The copy of the motion before the Court, however, clearly shows that it was a joint filing made by Chmielewski and Ellis.

Chmielewski and Ellis identified 22 individuals and organizations that, they asserted, should have been made parties. For his part, Stone submitted a separate filing adopting the arguments in Chmielewski and Ellis's motion to dismiss.

Chmielewski and Ellis later filed an amendment to their motion to dismiss, in which they argued that the circuit court never acquired subject-matter jurisdiction over the will contest because Mills had failed to name Hoover's estate as a party to the contest within six months of the admission of Hoover's will to probate. In support, they pointed to a portion of § 43-8-199, Ala. Code 1975, which provides that a will contest may be filed "at any time within the six months after the admission of [the] will to probate."[2] In the amendment to their motion, Chmielewski and Ellis requested the circuit court "to dismiss the Petition of Mills in its entirety."[3]

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[2]The Court notes that Chmielewski and Ellis's motion to dismiss was filed more than six months after admission of Hoover's will to probate. Nothing before the Court indicates that Chmielewski appeared in the will contest before filing the motion to dismiss.

[3]There is no filing before the Court whereby Stone expressly adopted the arguments made in the amendment to

On May 22, 2018, the circuit court entered an order stating: "Motion to dismiss, or in the alternative summary judgment filed by Estate of Yvonne Speer Hoover, deceased is hereby granted." The order did not expressly mention Ellis. The same day, the circuit court entered an order stating: "Motion to dismiss, or in the alternative summary judgment filed by [Roger Stone] is hereby disposed by separate order." On June 12, 2018, however, the circuit court entered an additional order stating: "Motion to dismiss, or in the alternative summary judgment, filed by respondent Roger Stone is hereby granted."[4]

On June 22, 2018, 31 days after entry of the May 22, 2018, orders, Mills filed a postjudgment motion. In that motion, Mills cited Rule 59, Ala. R. Civ. P., and requested the circuit court to alter, amend, or vacate the May 22, 2018, order granting Chmielewski and Ellis's motion to dismiss. On July 6, 2018, Mills filed a second motion, which requested the circuit court to alter, amend, or vacate the June 12, 2018, order.

Chmielewski and Ellis's motion to dismiss.

[4]The parties do not discuss the circuit court's references to summary judgment in its orders.

In response to Mills's motions, Chmielewski, Ellis, and Stone argued that the circuit court had lost jurisdiction over the proceedings 30 days after entry of the May 22, 2018, orders and did not have the power to reinstate the action. See generally Rule 59(e), Ala. R. Civ. P. ("A motion to alter, amend, or vacate the judgment shall be filed not later than thirty (30) days after entry of the judgment."); 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."). The circuit court rejected that argument and entered an order purporting to set aside the orders of May 22, 2018, and June 12, 2018. The circuit court also directed Mills to join all parties required under § 43-8-200. In support of its ruling, the circuit court reasoned that, "[b]ecause not all parties were disposed of in this Court's previous orders, this Court finds that those orders were not final judgments ...." This mandamus petition followed.

> "A writ of mandamus is an extraordinary remedy, and is appropriate when 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 BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001). Mills initially argues that a mandamus petition is not the proper mechanism for appellate review of the circuit court's order. The petitioners, on the other hand, point out that "the question of subject matter jurisdiction is reviewable by a petition for a writ of mandamus." Ex parte Johnson, 715 So. 2d 783, 785 (Ala. 1998). In Ex parte Caremark Rx, LLC, 229 So. 3d 751 (Ala. 2017), this Court held that the trial court in that case had "lost jurisdiction to amend or modify [a final] judgment 30 days after it was entered," and the Court issued a writ of mandamus directing the trial court to vacate an order purporting to do so. 229 So. 3d at 760. We have also indicated that a mandamus petition is the appropriate means to review a trial court's order purporting to grant a postjudgment motion that has already been denied by operation of law. Ex parte Johnson, 715 So. 2d at 785 (issuing a writ of mandamus after noting that, "[i]f the [postjudgment] motion was a Rule 59(e)[, Ala. R. Civ. P.,] motion, then it was denied by operation of law after 90 days [pursuant to Rule

59.1, Ala. R. Civ. P.,] and the trial court, at the end of the 90th day, lost jurisdiction to set aside the [final] judgment"). Our Court of Civil Appeals has indicated that a trial court's unauthorized extension of the 30-day deadline for filing a postjudgment motion under Rule 59, Ala. R. Civ. P., is reviewable by a petition for a writ of mandamus. Ex parte Patterson, 853 So. 2d 260, 262 (Ala. Civ. App. 2002). In the present case, it is alleged that the circuit court entered final orders disposing of the action and, no postjudgment motion having been filed within 30 days, lost jurisdiction over the matter. Thereafter, the circuit court, allegedly without jurisdiction, entered an order purporting to grant a postjudgment motion and to reinstate the proceedings. We hold that a mandamus petition is the appropriate means to review that order.

Mills argues that no final judgment was entered on May 22, 2018, and that the will contest therefore remained pending. For that reason, she seeks to distinguish cases indicating that a trial court loses jurisdiction if no postjudgment motion is filed within 30 days of the entry of a final judgment. The Court disagrees. Rather, we conclude

that a final judgment, which is one that "conclusively determines the issues before the court and ascertains and declares the rights of the parties," Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995), was entered on May 22, 2018, and that the proceedings were dismissed in their entirety on that day.

Rule 58(b), Ala. R. Civ. P., provides in part that "[a] written order or a judgment will be sufficient if it ... indicates an intention to adjudicate, considering the whole record, and if it indicates the substance of the adjudication." In Boykin v. Law, 946 So. 2d 838 (Ala. 2006), this Court said:

> "We construe [a] trial court's judgment like other written instruments: the rules of construction for contracts are applicable for construing judgments. Hanson v. Hearn, 521 So. 2d 953, 954 (Ala. 1988); Moore v. Graham, 590 So. 2d 293, 295 (Ala. Civ. App. 1991). We are free to review 'all the relevant circumstances surrounding the judgment,' and 'the entire judgment ... should be read as a whole in the light of all the circumstances as well as of the conduct of the parties.' Hanson, 521 So. 2d at 955."

946 So. 2d at 848.

Mills points out that the circuit court's first order of May 22, 2018, which granted the "motion to dismiss ... filed by the Estate of Yvonne Speer Hoover," did not expressly

mention Ellis. The failure of the order to expressly reference Ellis, who was a party to the motion to dismiss and who asserted the same arguments Hoover's estate asserted, did not leave the proceedings pending as to Ellis. In their joint motion, Ellis and Chmielewski argued that Mills's petition should be dismissed in its entirety based on her alleged failure to timely commence the will contest and to join all parties required by § 43-8-200. Those grounds for dismissal apply to the entire action and are not somehow exclusive to the proceeding as it relates to Hoover's estate. It is also worth mentioning that, on the same day the circuit court granted the motion to dismiss "filed by the Estate of Yvonne Speer Hoover," the circuit court denied a motion that had been filed earlier by Mills, in which she requested that the circuit court dismiss only Hoover's estate from the proceedings. Moreover, the second order of May 22, 2018, stated that Stone's filing, which had adopted Chmielewski and Ellis's motion to dismiss, "is hereby disposed by separate order," which indicates that the circuit court intended its earlier order to apply to Stone. There has been no persuasive argument as to why the circuit court would grant a motion to

dismiss as to Hoover's estate and Stone but not as to Ellis.[5] Finally, Mills's assertion that no final judgment had been entered on May 22, 2018, is inconsistent with her filing a motion, pursuant to Rule 59(e), to alter, amend or vacate the circuit court's order granting Chmielewski and Ellis's motion. See Ex parte Troutman Sanders, LLP, 866 So. 2d 547, 550 (Ala. 2003) (indicating that postjudgment motions under Rule 59 may be filed only as to final judgments). Based on "'all the relevant circumstances surrounding the judgment,'" Boykin, 946 So. 2d at 848 (quoting Hanson v. Hearn, 521 So. 2d 953, 955 (Ala. 1988)), it is clear that the circuit court dismissed the proceedings in their entirety on May 22, 2018.

Mills relies on the justification the circuit court gave for purporting to set aside the dismissal--its conclusion that "not all parties were disposed of" by the previous orders.

[5]Mills argues that the circuit court's second order of May 22, 2018, did not dismiss the proceedings as to Stone and that such a dismissal did not occur until entry of the June 12, 2018, order. We, however, conclude that the order of June 12, 2018, was superfluous. As noted, the second order of May 22, 2018, which was entered after the order granting Ellis and Chmielewski's motion to dismiss, stated that Stone's motion to dismiss, which had simply adopted the arguments made by Chmielewski and Ellis, was "hereby disposed by separate order." It is clear that the circuit court intended to dismiss the entire will contest as to all parties on May 22, 2018.

Although trial courts can interpret and clarify the meaning of their judgments, they cannot convert a final judgment into a nonfinal judgment simply by declaring it to be nonfinal. See Smith v. Fruehauf Corp., 580 So. 2d 570, 572 (Ala. 1991) ("[A final judgment] will not be made nonfinal by the trial court's calling it nonfinal.").

Finally, Mills contends that, when Ellis and Chmielewski filed their joint motion to dismiss, Chmielewski (as personal representative of Hoover's estate) was not yet a party to the will contest because she had not been granted leave to intervene. Thus, Mills suggests, the motion to dismiss was, in essence, never validly filed. She asserts that Hoover's estate "was never a party to this action and its prayers for relief were never before the [circuit] court." In support, she points to Ex parte State Personnel Board, 45 So. 3d 751, 754 (Ala. 2010), in which this Court acknowledged that "'[l]eave of court is not required for the filing of a motion to intervene'" but that "'[a]n order authorizing intervention is, of course, necessary before the would-be intervenor becomes a party.'" 45 So. 3d at 754 (quoting Committee Comments on the 1973 Adoption of Rule 24, Ala. R. Civ. P.)

(emphasis omitted). Assuming that the circuit court's order in the present case granting Chmielewski and Ellis's motion to dismiss was not sufficient to recognize Hoover's estate as a party to the action, the motion to dismiss was expressly joined by Ellis. Mills does not persuasively argue that Ellis was not a party to the proceedings and that her request for dismissal was not validly before the circuit court. As discussed, we construe the circuit court's order granting the motion to dismiss as applicable to Ellis even though it did not expressly reference her.

Mills does not dispute that, if the proceedings were disposed of by final judgment on May 22, 2018, then the circuit court lost jurisdiction after 30 days. Because we conclude that the proceedings were indeed dismissed on that date, we grant the petition and direct the circuit court to set aside its order purporting to vacate the dismissal.

PETITION GRANTED; WRIT ISSUED.

Stuart, C.J., and Bolin, Parker, Main, Bryan, and Mendheim, JJ., concur.