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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

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Michael J. Holt

v.

**Jere B. Holt, as coexecutor of the Estate of
Geneva H. Holt, deceased**

**Appeal from Walker Circuit Court
(CV-16-900276)**

SHAW, Justice.

Michael J. Holt, the coexecutor of the estate of Geneva H. Holt, deceased, and the defendant in an action below involving the estate, appeals the Walker Circuit Court's

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judgment in favor of the plaintiff and coexecutor of the estate, Jere B. Holt. We dismiss the appeal.

Facts and Procedural History

In October 2007, Jere and Michael's mother, Geneva Holt, died. In May 2008, Jere and Michael filed a petition in the Walker County Probate Court to probate their mother's will. In June 2008, the probate court entered an order admitting the will to probate and issued letters testamentary to Jere and Michael as coexecutors.

In August 2016, Jere filed a petition in the Walker Circuit Court to remove the proceedings from the probate court. In a separate motion, Jere asked the circuit court to construe the provisions of the will to allow the remaining assets in Geneva's estate to be used to satisfy a \$140,000 cash bequest to him in Geneva's will. Michael filed a response to Jere's motion in which he asserted a counterclaim seeking a judgment declaring that the specific bequest to Jere had adeemed. On June 4, 2019, the circuit court entered an order in favor of Jere, holding that the cash bequest to Jere could be satisfied by selling assets of the estate. Thereafter, Michael filed a notice of appeal to this Court.

Discussion

Although neither party on appeal challenges the circuit court's jurisdiction, "the absence of subject-matter jurisdiction cannot be waived, and it is the duty of an appellate court to notice the absence of subject-matter jurisdiction ex mero motu." McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017). As a general matter, the probate court has both original and general jurisdiction over matters relating to the administration of an estate. See § 12-13-1, Ala. Code 1975. However, the circuit court may acquire jurisdiction over the administration of an estate if the estate is properly removed from the probate court to the circuit court pursuant to § 12-11-41, Ala. Code 1975. That Code section 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

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estate can be better administered in the circuit court than in the probate court."

Thus, "[o]nce a party seeking to remove the administration of an estate pursuant to § 12-11-41[, Ala. Code 1975,] makes a prima facie showing that she is an "heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed,"" the circuit court, to obtain jurisdiction, must then order the removal of the administration of the estate. Nelson v. Nelson, 10 So. 3d 603, 605 (Ala. Civ. App. 2008) (quoting Ex parte McLendon, 824 So. 2d 700, 704 (Ala. 2001)).

In DuBose v. Weaver, 68 So. 3d 814 (Ala. 2011), this Court addressed a situation in which a party sought to remove the administration of an estate from a probate court to a circuit court pursuant to § 12-11-41. In explaining how a circuit court can obtain jurisdiction of such a case, this Court made clear that "the 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 the estate pursuant to § 12-11-41[, Ala. Code 1975]." 68 So. 3d at 822 (some emphasis added). Because, among other things, the circuit court never

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"enter[ed] an order purporting to remove the administration of the estate from probate court," 68 So. 3d at 822, this Court concluded that the circuit court did not obtain subject-matter jurisdiction and that, as a result, the judgment entered by that court was void and the appeal was due to be dismissed. See also Nelson, 10 So. 3d at 605 (holding that, because the circuit court "failed to enter an order removing" the administration of the estate from the probate court, "the circuit court never acquired jurisdiction").

In the present case, the record contains no order of removal, and the parties did not produce one after this Court issued a show-cause order. It thus appears that a removal order was not entered in this case. As a result, the circuit court never acquired subject-matter jurisdiction over the administration of Geneva's estate; its June 4, 2019, order, therefore, is void, and the appeal is due to be dismissed. See Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008) ("A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.").

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However, the parties note the following language from the circuit court's June 4, 2019, order:

"3. Since there are other acts to be accomplished in this estate, which has been removed to the Circuit Court of Walker County, Alabama, the Court leaves the estate open at the present time to accomplish all actions necessary to eventually effect the closing of this estate."

(Emphasis added.) According to the parties, the emphasized language in the above quote constituted an "order of removal" by the circuit court, despite the fact that the circuit court never issued a separate order removing the estate from the probate court.

Contrary to the parties' contention, however, the circuit court's June 4, 2019, order is not an order of removal. This order was entered after trial and merely states an apparently incorrect belief that the case had previously been properly removed when, in fact, it had not. The parties have offered no other evidence or explanation indicating that the circuit court entered an actual order of removal as required by the caselaw discussed above.

The parties also argue that, even if this Court were to conclude that the circuit court never obtained jurisdiction over the administration of the estate because it failed to

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enter a separate removal order, Michael's counterclaim invoked the circuit court's jurisdiction. This argument is unpersuasive. This Court has previously held that, when a court fails to initially obtain subject-matter jurisdiction, it does not obtain jurisdiction over a subsequently filed counterclaim. See Board of Sch. Comm'rs of Mobile Cty. v. Thomas, 130 So. 3d 199, 204 (Ala. Civ. App. 2013) (holding that, because the Board's petition did not invoke the trial court's jurisdiction, that court likewise did not obtain jurisdiction over a party's counterclaims, filed in the same action, and its dismissal of those counterclaims was also void). Here, because the circuit court never acquired subject-matter jurisdiction over the administration of Geneva's estate, that court likewise did not obtain jurisdiction over Michael's counterclaim.

The circuit court's June 4, 2019, order is void. Because a void judgment will not support an appeal, this appeal from that judgment must be dismissed. See Vann, 989 So. 2d at 559, and Blevins v. Hillwood Office Ctr. Owners' Ass'n, 51 So. 3d 317, 321-23 (Ala. 2010).

APPEAL DISMISSED.

Parker, C.J., and Bryan, Mendheim, and Mitchell, JJ., concur.