

REL: June 30, 2020

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Leah E. Brown, Robert Allen Brown, and Cheryl P. Woddail

v.

Ellen Berry-Pratt, as successor administrator of the Estate
of Pauline Brown, deceased

Appeal from Tuscaloosa Circuit Court
(CV-06-1154)

MITCHELL, Justice.

Leah E. Brown ("Leah"), Robert Allen Brown ("Allen"), and Cheryl P. Woddail ("Cheryl") are heirs of Pauline Brown ("Brown"), who died without a will. Leah, Allen, and Cheryl

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appeal the judgment of the Tuscaloosa Circuit Court authorizing Ellen Berry-Pratt, the administrator of Brown's estate, to sell certain real property owned by Brown at the time of her death. Because Leah, Allen, and Cheryl have not established that the circuit court erred by entering its judgment in favor of Berry-Pratt, we affirm.

Facts and Procedural History

On May 25, 2005, Brown died in Tuscaloosa County without leaving a will. She was survived by four children: Leah, Allen, Cheryl, and Debra Gifford ("Debra"). At the time of her death, Brown owned at least 18 parcels of real estate in Alabama and Mississippi encompassing more than 560 acres.

In November 2005, the Tuscaloosa Probate Court appointed Zondra Hutto as special administrator to temporarily manage Brown's estate; the probate court later issued Hutto full letters of administration appointing her to be the personal representative of the estate. After Debra petitioned the Tuscaloosa Circuit Court to remove the administration of Brown's estate from the probate court, the circuit court entered an order granting Debra's petition and removing the estate to the circuit court for future administration.

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In approximately 2010, Leah, Allen, Cheryl, and Debra concluded that Hutto was mismanaging Brown's estate. In May 2011, Hutto resigned as personal representative. Over the next several years, an attorney appointed by the circuit court to represent Brown's estate pursued a claim against Hutto's surety bond based on Hutto's alleged mismanagement of the estate.¹ A settlement was eventually reached, and, as part of its order entering a judgment on that settlement, the trial court appointed Leah administrator of Brown's estate; formal letters of administration were issued to her in August 2015.

On May 18, 2018, Allen and Cheryl petitioned the circuit court for an order requiring Leah to file an inventory and an accounting of the estate, alleging that she had yet to do so since being appointed administrator. Allen and Cheryl also requested that Leah be removed as administrator and that they be appointed to take her place. On June 21, 2018, the circuit

¹Although the materials in the record refer to this attorney as a "guardian ad litem," because the attorney was representing the estate of a deceased person -- not a minor or an individual shown to be incompetent -- he is properly considered an "administrator ad litem" as opposed to a "guardian ad litem." See Pharmacia Corp. v. McGowan, 915 So. 2d 549, 550 (Ala. 2004) (recognizing that an attorney was appointed "the guardian ad litem for the minor plaintiffs and the administrator ad litem for the deceased plaintiffs").

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court entered an order removing Leah and appointing Berry-Pratt as the new administrator of Brown's estate. The circuit court further indicated that it would address the other issues raised by Allen and Cheryl at a later date "by separate orders if necessary." On July 9, 2018, the circuit court issued letters of successor administration to Berry-Pratt.

On July 27, 2018, Berry-Pratt submitted to the circuit court an inventory of the 18 parcels of real estate Brown owned when she died, listing the location, approximate acreage, and most recent tax-appraised value for each parcel. Invoking §§ 43-2-442 and -844, Ala. Code 1975, Berry-Pratt requested that the circuit court allow her to list those properties for sale "for payment of the costs of administration of the estate and ... equitable distribution to the heirs." See § 43-2-442 (providing that, "[i]n case of intestacy, lands may be sold by the administrator for the payment of debts") and § 43-2-844 (authorizing the administrator of an estate, after receiving court approval, to "dispose of an asset, including land in this or another state," and to "[s]ell, mortgage, or lease any real or

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personal property of the estate"). The circuit court granted her motion that same day, stating in its order that the sale was needed "to provide funds to settle and distribute inheritances to the heirs of Pauline Brown who do not all agree to accept their share in kind and also to alleviate the expense and liability of maintaining the properties." None of Brown's four children filed anything with the circuit court indicating that they opposed the granting of Berry-Pratt's motion, although the certificate of service attached to the motion indicates that it was mailed to each of them.

On August 28, 2018, Berry-Pratt notified the circuit court that she had located a buyer willing to purchase two adjacent parcels of property on McFarland Boulevard in Northport ("the Northport property") for \$501,101. She noted that the tax-appraised value of the two parcels was \$285,200 and recommended that the circuit court allow the sale to proceed because "[t]he property is a liability to the estate of Pauline Brown in that it is uninsured and incurs expense such as annual property tax in the approximate amount of \$2,200." Berry-Pratt further stated that, under § 43-2-848, Ala. Code 1975, she was entitled to receive "reasonable

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compensation" in the amount of 5% of the sale price for her services in facilitating the sale.²

The same day Berry-Pratt notified the circuit court that she had received an offer on the Northport property, Allen and Cheryl notified the attorney who had been representing them that they were terminating his representation; his subsequent motion to withdraw was granted by the circuit court on September 4, 2018. Allen and Cheryl did not immediately retain successor counsel.

On October 1, 2018, the circuit court held a hearing on Berry-Pratt's motion to sell the Northport property. A transcript of that hearing is not in the record, and it is not clear whether Leah, Allen, Cheryl, or Berry-Pratt provided sworn testimony at that hearing or whether only oral argument was presented. It is apparent, however, that Leah, Allen, and Cheryl made it known that they objected to the price for which

²Section 43-2-848(a) provides that the reasonable compensation a personal representative receives "shall not exceed two and one-half percent of the value of all property received and under the possession and control of the personal representative and two and one-half percent of all disbursements." Section 43-2-848(b) further explains, however, that "[i]n addition the court may allow a reasonable compensation for extraordinary services performed for the estate."

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the Northport property was being sold, and the record contains three comparative real-estate listings that they submitted to the circuit court for other commercial properties on McFarland Boulevard in Northport with asking prices ranging from \$2.376 million to \$3.9 million. It is also evident that someone at the October 1 hearing advised the circuit court that Brown's other heir -- her daughter Debra -- was disabled and had dementia.

The next day, October 2, 2018, Berry-Pratt moved the circuit court to appoint a guardian ad litem to represent Debra; the circuit court granted that motion and appointed a guardian ad litem that same day. Simultaneously, the circuit court stated that it was deferring its ruling on Berry-Pratt's request to sell the Northport property for 30 days so that the unrepresented parties could retain counsel.

On October 10, 2018, Berry-Pratt filed a response to the objections that Leah, Allen, and Cheryl apparently made at the October 1 hearing. In that response, Berry-Pratt argued that the three real-estate listings that Leah, Allen, and Cheryl had submitted were of no relevance because they were active listings as opposed to completed sales. She further

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emphasized that the listings were from October 2006, April 2014, and April 2017 and argued that the fact that the properties had not sold at the listed prices was an indication that those asking prices were too high and were not accurate reflections of the values of the properties. Finally, she argued that the locations and specific characteristics of those properties were different than the Northport property she was asking the circuit court to permit her to sell. Berry-Pratt simultaneously filed an updated inventory of the estate indicating that the balance of the estate's cash account was \$2,028, down from \$4,894 when she was appointed administrator approximately three months earlier.

On October 26, 2018, an attorney representing Leah, Allen, and Cheryl filed a notice of appearance. In conjunction with Berry-Pratt and Debra's guardian ad litem, that attorney moved the circuit court to schedule an attorneys-only status conference. The circuit court scheduled that conference for December 6, 2018, but there is no transcript of the hearing in the record before us. On December 17, 2018, the circuit court granted Berry-Pratt's motion to sell the Northport property. In its judgment

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"authorizing, approving, and confirming [the] sale of decedent's real estate," the circuit court explained:

"This sale is to liquidate real estate for an equitable division of inheritance to the four (4) children and heirs of Pauline Brown and to avoid the liability and expense of maintaining the property. This sale is in the best interest of the estate of Pauline Brown and the sale is due to be approved and confirmed.

". . . .

"... [T]he offer to purchase this property ... in the amount of \$501,101 is the best price that can be ascertained for this property which is a liability and burden to the estate of Pauline Brown.

"It is therefore ordered that the successor administrator Ellen Berry-Pratt is hereby authorized under the powers of Ala. Code [1975,] 43-2-442 ... and -844 to sell the above-described property"

The circuit court further ordered that Berry-Pratt was entitled to "reasonable compensation of 5% of the proceeds of the sale for her services in facilitating and completing this sale."³

On December 27, 2018, Leah, Allen, and Cheryl moved the circuit court to reconsider its judgment.⁴ In that motion,

³Leah, Allen, and Cheryl have not challenged in this appeal the reasonableness of the compensation paid to Berry-Pratt for the sale of the Northport property.

⁴Debra was not a party to this motion, but the motion states that the guardian ad litem appointed to represent her

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they disputed Berry-Pratt's claim that the estate needed funds, arguing that the estate had other income-producing properties that produced sufficient income to pay the property taxes for the Northport property. They further claimed that the only reason the estate needed funds was because Berry-Pratt had been steadily depleting the estate's funds since her appointment, and, for that reason, they stated that they would personally pay the property taxes due on the Northport property. Finally, Leah, Allen, and Cheryl argued that Berry-Pratt had failed to comply with various statutory requirements governing the sale of real property by the administrator of an estate, including those found in § 43-2-442, which, they said, authorizes an administrator to sell real property only "for the payment of debts." According to Leah, Allen, and Cheryl, Berry-Pratt had "failed to set forth any debts of the estate, or costs and expenses of the administration [of the estate]." Thus, they argued, the circuit court should vacate its December 17 judgment permitting Berry-Pratt to sell the Northport property. On January 2, 2019, the circuit court denied the motion to

had discussed the motion with her and that she agreed with the substance of it.

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reconsider, and, later that month, Leah, Allen, and Cheryl filed their notice of appeal to this Court.⁵

Standard of Review

Although the parties disagree about some of the peripheral facts, this appeal can be resolved by applying well established principles of law to the relevant facts, which are essentially undisputed. Accordingly, our standard of review is de novo. See Ruttenberg v. Friedman, 97 So. 3d 114, 134 (Ala. 2012) (explaining that, when the issue before this Court

⁵Although Leah, Allen, and Cheryl stated in their December 27 motion to reconsider that the circuit court's December 17 judgment authorizing Berry-Pratt to sell the Northport property and awarding her a fee based on that sale was not a final judgment, they now claim that their appeal is proper under § 12-22-4, Ala. Code 1975 (authorizing an appeal from a circuit court's judgment on the partial settlement of an estate). See Wehle v. Bradley, 49 So. 3d 1203, 1207 (Ala. 2010) (concluding that heirs' appeal challenging the fee claimed by the personal representatives "properly invoked this Court's appellate jurisdiction" under § 12-22-4). Berry-Pratt agrees that the circuit court's judgment supports an appeal, although that fact is not dispositive. In Myers v. Parker, 349 So. 2d 1136, 1137 (Ala. 1977), this Court previously exercised jurisdiction in an appeal of a judgment granting the administrator of an estate's application "to sell lands of the decedent for the payment of lawful charges against the estate." See also Sexton v. Sexton, 280 Ala. 479, 482, 195 So. 2d 531, 533 (1967) ("When the court orders the lands sold, that decree is final insofar as it will support an appeal."). Based on these authorities, we acknowledge that this Court has jurisdiction to consider this appeal.

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"presents a question of law and does not concern a disputed issue of fact, our review is de novo").

Analysis

Leah, Allen, and Cheryl argue that the circuit court's judgment should be reversed because, they allege, real property belonging to a decedent at the time of her death can be sold by the estate only to pay debts incurred by the decedent before her death, and there is no evidence of any such debts in this case. Leah, Allen, and Cheryl further argue that Berry-Pratt was not qualified to serve as the administrator of Brown's estate and that this Court should order her to reimburse the estate for the expenses it has incurred because of her allegedly self-serving attempt to sell the Northport property. We reject these arguments.

A. Power of an Estate Administrator to Sell Real Property

Leah, Allen, and Cheryl first argue that the circuit court erred by authorizing Berry-Pratt to sell the Northport property because, when a property owner dies without a will, her "real estate vests immediately in the heirs at law subject only to recapture by the administrator ... in the event th[e] property is needed for the payment of debts of the decedent."

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McCollum v. Towns, 435 So. 2d 17, 19 (Ala. 1983). They assert that Brown's estate has been open since 2005 and that all debts owed by Brown when she died have been paid. Thus, although § 43-2-442 provides that, "[i]n case of intestacy, lands may be sold by the administrator for the payment of debts," Leah, Allen, and Cheryl argue that Berry-Pratt cannot now "recapture" and sell the Northport property because that sale is not needed to pay any debts owed by Brown when she died.

Berry-Pratt says in response that Leah, Allen, and Cheryl's argument reveals an incomplete understanding of the relevant law. Berry-Pratt does not dispute the legal principle recognized in McCollum -- that an estate's administrator may "recapture" real estate from an heir for the payment of the decedent's debts -- but she argues that the debts of a decedent include not just the sums that the decedent owes when she dies, but also the "fees and charges of administration." See § 43-2-371, Ala. Code 1975 (setting forth the order in which the debts of an estate are to be paid and noting that the "fees and charges of administration" are prioritized above all debts other than funeral expenses).

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Berry-Pratt's position is supported by additional authority, including § 43-2-830, Ala. Code 1975, which provides:

"(a) Upon the death of a person, decedent's real property devolves ..., in the absence of testamentary disposition, to decedent's heirs

".

"(c) The devolution of a decedent's property, real and personal, is subject to homestead allowance, exempt property, family allowance, rights of creditors, elective share of the surviving spouse, and to administration."

Our appellate courts have considered how § 43-2-830 should be applied. In Self v. Roper, 689 So. 2d 139, 141 (Ala. Civ. App. 1996), the Court of Civil Appeals summarized the statute as follows:

"[T]itle to the real property vests upon death in the heirs as joint owners, but subject to divestment, if needed, for payment of debts of the estate or costs and expenses of administration. Real property is left with the heirs, the persons presumptively entitled thereto, unless the personal representative shall determine that his possession of the real property is necessary for purposes of administration."

In Schlumpf v. D'Olive, 203 So. 3d 57, 62 (Ala. 2016), this Court quoted Self extensively and concluded that the Court of Civil Appeals' analysis of § 43-2-830 was "persuasive."

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The parties do not cite § 43-2-830, Schlumpf, or Self in their briefs to this Court, but those authorities clearly support Berry-Pratt's argument that she was entitled to sell the Northport property if funds were needed for the administration of Brown's estate. It is apparent from the materials in the record that the cash holdings of the estate were limited and that there were, in fact, expenses that the estate would need to pay. Those expenses included not only the fees to which Berry-Pratt was entitled as administrator, but also the fees of the guardian ad litem who had been appointed to represent Debra. Moreover, the circuit court's order authorizing Berry-Pratt to pursue a sale of real estate explained that one of the purposes of any sale was to provide funds to finally settle and close the estate, which, we note, has now been open for approximately 15 years. Berry-Pratt, who is not an attorney, claims that the estate also needs funds to retain an attorney to assist with that closing process, and, in their brief to this Court, Leah, Allen, and Cheryl acknowledge that they too would have to employ an attorney and incur those legal fees if they were appointed as administrators. In light of this, we cannot hold that the

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circuit court erred by concluding that funds were needed for the administration of Brown's estate.

Finally, the circuit court stated in its judgment authorizing Berry-Pratt to sell the Northport property that the sale was "in the best interest of the estate" and that Berry-Pratt was authorized by both § 43-2-442 and § 43-2-844 to pursue the sale. We have already addressed § 43-2-442, but we note that § 43-2-844 authorizes the administrator of an estate, with the approval of the trial court, to "dispose of an asset, including land in this or another state," and to "[s]ell, mortgage, or lease any real or personal property of the estate." It is undisputed that Berry-Pratt complied with the statutory requirement in § 43-2-844 that she obtain court approval before selling real property of the estate. Thus, § 43-2-844 also supports the circuit court's judgment authorizing Berry-Pratt to sell the Northport property.

B. Berry-Pratt's Appointment and Performance as Administrator

Leah, Allen, and Cheryl next argue that the circuit court erred by appointing Berry-Pratt as administrator of the estate because, they allege, she was not qualified for that appointment. They also argue that Berry-Pratt should be

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ordered to reimburse the estate for the expenses it has incurred in this litigation because, they say, the litigation stems from Berry-Pratt's "egregious actions" in the pursuit of "a big commission." Leah, Allen, and Cheryl's brief, p. 18. But nothing in the record indicates that either of those arguments was presented to the circuit court. "'This Court cannot consider arguments raised for the first time on appeal; rather, our review is restricted to the evidence and arguments considered by the trial court.'" Marks v. Tenbrunsel, 910 So. 2d 1255, 1263 (Ala. 2005) (quoting Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992)). Therefore, we need not consider Leah, Allen, and Cheryl's arguments concerning Berry-Pratt's appointment or alleged personal liability for the expenses the estate incurred as a result of this litigation.

Conclusion

Leah, Allen, and Cheryl challenge the judgment of the circuit court allowing Berry-Pratt, the administrator of their deceased mother's estate, to sell real estate that their mother owned at her death. After reviewing the relevant authorities and the parties' arguments, it is clear that Leah, Allen, and Cheryl have not established that the circuit court

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erred by entering its judgment. Accordingly, that judgment is affirmed.

AFFIRMED.

Bolin, Shaw, Wise, Bryan, Mendheim, and Stewart, JJ.,
concur.

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