REL: June 11, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1180868

William C. Harper

v.

Alice Lynn Harper Taylor

Appeal from Monroe Circuit Court
(CV-15-6)

1180869

William C. Harper

v.

Alice Lynn Harper Taylor

Appeal from Monroe Circuit Court
(CV-18-1)

1180915

Alice Lynn Harper Taylor

v.

William C. Harper

Appeal from Monroe Circuit Court
(CV-18-1)

1180916

Alice Lynn Harper Taylor

v.

William C. Harper

Appeal from Monroe Circuit Court
(CV-15-1)

MITCHELL, Justice.

1180868, 1180869, 1180915, 1180916

These appeals arise from a will-contest dispute between siblings. After their mother died, William C. Harper and Alice Lynn Harper Taylor disagreed about which version of their mother's will governed the disposition of her assets. After a purported transfer of the will contests from probate court to circuit court, the siblings submitted their dispute to a jury, which returned a verdict for Alice Lynn. William appealed and Alice Lynn cross-appealed. Because jurisdiction never properly vested in the circuit court, we dismiss these appeals.[1]

Facts and Procedural History

Alice Earle Harper died on March 1, 2013. She left three surviving children -- Alice Lynn, William, and James -- each of whom has been a party to this case. During her lifetime, Alice Earle drafted several wills, including one in 1995 and another in 2007. After her death, the children disagreed about which of her wills governed. William and James said that her 2007 will was valid, while Alice Lynn said that the 1995 will was the proper document to probate.

[1]Our holding on jurisdiction pretermits discussion of the other issues raised by the parties.

Alice Lynn filed a petition in the Monroe Probate Court to probate her mother's 1995 will. William moved to dismiss his sister's petition because he was attempting to probate the 2007 will in Escambia County. The Monroe Probate Court granted that motion. But following an appeal to this Court, Alice Lynn's petition to probate the 1995 will was allowed to proceed. See Taylor v. Harper, 164 So. 3d 542 (Ala. 2014).

Each sibling challenged the validity of the will favored by the other. Eventually, in accordance with § 43-8-190, Ala. Code 1975, the contests of the 1995 and 2007 wills were filed in the Monroe Probate Court. Alice Lynn sought to transfer the contests from the probate court to the Monroe Circuit Court under § 43-8-198, Ala. Code 1975. The probate court transferred the documents pertaining to the will contests to the circuit court. But that transfer lacked a certification from the probate court.

The will contests were tried to a jury. William presented evidence in favor of the 2007 will, then Alice Lynn presented evidence in support of the 1995 will. The jury found for Alice Lynn, and the circuit court entered a judgment in her favor.

William appealed the judgment, arguing, among other things, that it is void for lack of jurisdiction. Alice Lynn cross-appealed.

Standard of Review

Subject-matter jurisdiction is an unwaivable issue that this Court must consider ex mero motu. See MPQ, Inc. v. Birmingham Realty Co., 78 So. 3d 391, 393 (Ala. 2011). "Matters of subject-matter jurisdiction are subject to de novo review." DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011). If a circuit court's jurisdiction was not properly invoked, its judgment is void and nonappealable. MPQ, 78 So. 3d at 394.

Analysis

The dispositive issue in this case is whether the circuit court ever obtained jurisdiction over the will contests in light of the probate court's failure to certify the papers and documents pertaining to the contests.[2] Based on the plain language of the relevant statute, our precedent, and

[2]Alice Lynn does not contest William's assertion that the probate court failed to certify the papers and documents to the circuit court. The record is likewise devoid of any such certification from the probate court.

the record before us, it is clear that the circuit court did not obtain jurisdiction.

We begin with the text of the relevant statute. Section 43-8-198 provides, in relevant part:

> "Upon the demand of any party to the contest, ... the probate court, or the judge thereof, must enter an order transferring the contest to the circuit court of the county in which the contest is made, and must certify all papers and documents pertaining to the contest to the clerk of the circuit court, and the case shall be docketed by the clerk of the circuit court and a special session of said court may be called for the trial of said contest or, said contest may be tried by said circuit court at any special or regular session of said court."

(Emphasis added.) Over the past several decades, our Court has held that strict compliance with the requirements of § 43-8-198 is necessary for jurisdiction to attach. Jones v. Brewster, 282 So. 3d 854, 858 (Ala. 2019) ("In a long line of cases, this Court has held that strict compliance with the statutory language pertaining to a will contest is required to invoke the jurisdiction of the appropriate court."). In other words, "[a] court cannot depart from the procedures delineated in the statute and still retain jurisdiction." See Kaller ex rel. Conway v. Rigdon, 480 So.2d 536, 539 (Ala. 1985). There are numerous cases from our Court affirming this

principle. See, e.g., Jones, 282 So. 3d at 860 (holding that the circuit court never obtained subject-matter jurisdiction over a will contest under § 43-8-198 because the record was devoid of a transfer order from the probate court); Burns v. Ashley, 274 So. 3d 970, 974 (Ala. 2018) ("[A] circuit court cannot assume jurisdiction over a will contest pending in probate court absent strict compliance with the procedural requirements of § 43-8-198." (emphasis added)); Marshall v. Vreeland, 571 So. 2d 1037, 1038 (Ala. 1990) ("The requirements of § 43-8-198 must be complied with exactly, because will contest jurisdiction is statutorily conferred upon the circuit court." (emphasis added)); Bullen v. Brown, 535 So. 2d 76, 78 (Ala. 1988) ("It is clear that will contest jurisdiction, being statutorily conferred, must comply with the statutory language strictly in order to quicken jurisdiction of the appropriate court." (emphasis added)); Kaller, 480 So. 2d at 538 ("Because will contest jurisdiction is statutorily conferred, the procedural requirements of the applicable statute must be complied with exactly." (emphasis added)). By pairing the plain language of the statute with our precedent, the clear rule is that "a circuit court cannot assume jurisdiction over a will contest pending in probate court absent strict

compliance with the procedural requirements of § 43-8-198." Burns, 274 So. 3d at 974.

Two years ago, this Court listed the seven requirements that must be met to establish compliance with § 43-8-198:

> "(1) the will must not be admitted to probate, although it must be offered for probate before it can be contested; (2) the party seeking the transfer must file a written demand for the transfer in the probate court; (3) the transfer demand must be filed at the time of the filing of the will-contest complaint or other initial pleading; (4) the probate court must enter a written order transferring the will contest to the circuit court; (5) the probate court must certify the probate-court record pertaining to the will contest to the circuit-court clerk; (6) the circuit-court clerk shall docket the case in the circuit court; and (7) the circuit court must set the will contest for a trial at a regular or a special session of court."

Jones, 282 So. 3d at 857-58 (emphasis added; internal citation omitted). Therefore, in line with this statement and our otherwise consistent application of strict compliance with the statute, a probate court must certify the probate record pertaining to the will contest to the circuit-court clerk in order for the circuit court to obtain jurisdiction.

Although certification may seem like a mere technicality, there is an important reason for requiring it. "The policy behind [certification] is to

allow a will and other original documents, previously admitted to the probate court, to become part of the record in the circuit court without further authentication." Jones, 282 So. 3d at 865-66 (Sellers, J., dissenting). This requirement is no more taxing or technical than the other requirements in § 43-8-198 we consistently enforce. See, e.g., Jones, 282 So. 3d at 860 (voiding the judgment entered on a jury verdict following a three-day trial because the absence of a transfer order in the circuit-court record defeated the circuit court's jurisdiction); Burns, 274 So. 3d at 974 (dismissing the appeal of a judgment that was void for lack of jurisdiction in the circuit court because the probate court never entered a transfer order despite having an imperative duty to do so); Kaller, 480 So. 2d 538 (reversing a circuit-court judgment entered on a jury verdict and remanding based on the circuit court's lack of jurisdiction under § 43-8-198 "because the proponent did not file a pleading at the same time he filed the motion to transfer").

Alice Lynn cites Cook v. Cook, 396 So. 2d 1037 (Ala. 1981), to support her argument that mere transfer of the files to the circuit court -- without certification -- is sufficient to establish compliance with § 43-8-

198. As noted by William, this argument is misguided. In Cook, the Court refused to hold that a probate court's failure to certify the papers and documents in a will contest defeated jurisdiction under the predecessor statute to § 43-8-198. 396 So. 2d at 1040. It did so because, it said, the Court "can tell when jurisdiction attache[s]." Id. On the facts before it, the Court deemed the circuit court's acknowledged receipt of the papers on the record and the notation of transfer on the docket sheet to be sufficient. Id.

But in the 40 years since this Court issued its opinion in Cook, that case has never been cited in another opinion for the proposition that certification can be disregarded or relaxed.[3] And since 1981, this Court's

[3]At the time of this decision, Cook has been cited by a court in an opinion only seven times. In six of those opinions, Cook was cited for propositions relating to the qualification of expert witnesses. Baker v. Merry-Go-Round Roller Rink, Inc., 537 So. 2d 1, 3 (Ala. 1988); McKelvy v. Darnell, 587 So. 2d 980, 985 (Ala. 1991); Levarsque v. Regional Med. Ctr. Bd., 612 So. 2d 445, 449 (Ala. 1993); Bowden v. State, 610 So. 2d 1256, 1258 (Ala. Crim. App. 1992); Revis v. State, 101 So. 3d 247, 292 (Ala. Crim. App. 2011); Lane v. State, [Ms. CR-15-1087, May, 29, 2020] ___ So. 3d ___, ____ (Ala. Crim. App. 2020). The remaining opinion, Bolan v. Bolan, 611 So. 2d 1051 (Ala. 1993), is a will-contest transfer case. But certification was not the issue there either. See id. at 1054. In Bolan, the issue was whether the contest and the motion for transfer were filed on

interpretation of § 43-8-198 has become difficult to square with Cook's disregard of the certification requirement. In adopting a strict-compliance approach, this Court has not differentiated between the various requirements of the statute and has gone so far as listing certification as a "prerequisite[] [that] must be met." Jones, 282 So. 3d at 857. Even the dissents in Burns and Jones acknowledged the necessity of the certification requirement. See Burns, 274 So. 3d at 976 (Sellers, J., dissenting); Jones, 282 So. 3d at 865 (Sellers, J., dissenting) ("There is no question that compliance with this statute requires ... certifying papers filed in the probate court to the circuit court."). So it would be odd -- if not contradictory -- to require substantial compliance for one procedural requirement in § 43-8-198 (certification) when the text and the weight of our decisions from the past 40 years indicate that all requirements of the statute must be strictly satisfied. Because Cook has been implicitly overruled by our subsequent decisions mandating that the statute "must

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different days. Id. The Court cited broad principles from Cook to support its holding that the proponents had failed to meet their burden of demonstrating that the filings were, in fact, made on separate days. Id.

be followed to the letter," Kaller, 480 So. 2d at 539, we hold that mere transfer of documents by the probate court is not enough to satisfy § 43-8-198. In accordance with the statutory text, "all papers and documents pertaining to the contest" must be certified by the probate court.

Conclusion

The circuit court never obtained jurisdiction because the probate-court records were never certified upon the attempted transfer of the will contests to the circuit court as is required by § 43-8-198. Thus, the judgment of the circuit court is void. Since a void judgment will not support an appeal, McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017), these appeals are dismissed. We accordingly direct the circuit court to vacate its judgment in favor of Alice Lynn.

1180868 -- APPEAL DISMISSED.

1180869 -- APPEAL DISMISSED.

1180915 -- APPEAL DISMISSED.

1180916 -- APPEAL DISMISSED.

Parker, C.J., and Bryan and Stewart, JJ., concur.

Shaw, J., concurs in the result.

Bolin, Wise, and Sellers, JJ., dissent.

Mendheim, J., recuses himself.

SHAW, Justice (concurring in the result).

I concur in the result and agree with the main opinion that, for a circuit court to obtain jurisdiction over a will contest transferred from a probate court, the probate court "must certify all papers and documents pertaining to the contest to the clerk of the circuit court." Ala. Code 1975, § 43-8-198. Our prior caselaw requires strict compliance with § 43-8-198 in order for a circuit court to obtain jurisdiction. Kaller ex rel. Conway v. Rigdon, 480 So. 2d 536, 538 (Ala. 1985) ("Because will contest jurisdiction is statutorily conferred, the procedural requirements of [§ 43-8-198] must be complied with exactly.").

A will contest is initiated in the probate court by the filing of written "allegations." Ala. Code 1975, § 43-8-190. A party may make a demand to transfer the contest to the circuit court "in writing at the time of filing the initial pleading." § 43-8-198. Ex parte Ricks, 164 So. 3d 1141, 1146 (Ala. 2014) (holding that a proper demand for a transfer under § 43-8-198 is required for the probate court to be divested of jurisdiction). The probate court must enter an order transferring the contest to the circuit court; this is required for the circuit court to obtain jurisdiction. Jones v.

Brewster, 282 So. 3d 854, 860 (Ala. 2019) ("The entry of a written order by the probate court transferring a will contest to the circuit court is an essential procedural requirement under § 43-8-198 in order for the circuit court to obtain subject-matter jurisdiction, and the probate court had an imperative duty to enter such an order.").

Section 43-8-198 further requires that the probate court "must certify all papers and documents pertaining to the contest to the clerk of the circuit court." On its face, this could be viewed as a mere ministerial duty on the part of the probate court. However, as noted above, a will contest under § 43-8-198 is initiated in the probate court by the filing of the written "allegations" in that court, that is, the contestant's pleadings that invoke the will-contest action. The order to transfer alone does not provide the circuit court with the pleadings that actually initiate the action. Section 43-8-198 seems to indicate that it is necessary for the "papers and documents pertaining to the contest," including the pleadings necessary to invoke jurisdiction over a will contest, to be submitted to the circuit court for it to obtain jurisdiction. How that is done is specifically defined: the probate court "must certify" all the papers and documents.

This step is required by § 43-8-198 and "must be complied with exactly." Kaller, 480 So. 2d at 538.

In Cook v. Cook, 396 So. 2d 1037, 1040 (Ala. 1981), the papers and documents from the probate court were never certified to the circuit clerk. This Court conceded that a "formal order and certification is desirable" but that the circuit clerk had acknowledged receipt of the papers and the docket sheet indicated that the file had been transferred to the circuit court. 396 So. 2d at 1040. The Court held: "[T]he purpose of the statute is met. We can tell when jurisdiction attached in circuit court of the will contest." Id. I respectfully disagree on both points.

It is necessary that the circuit court receives a complete and correct record, which a certification would ensure. I cannot conclude that an uncertified record would satisfy that purpose; an uncertified record that may not be complete or correct would not allow one to "tell" with the requisite confidence "when jurisdiction attached." This might not be required in other contexts, such as when a circuit court transfers a case to another circuit court, or when a circuit court removes the administration of an estate from the probate court, but the requirements

for a will-contest transfer, which, according to our caselaw, is necessary for jurisdiction to attach, are specifically provided here. Although the Court in Cook held that the "purpose" of the Code section had been met, its terms were not.

Stated differently, in the context of a will-contest transfer, the legislature has authorized the imposition of jurisdiction on the circuit court by the probate court. To accomplish that end, it appears that the circuit court does not acquire jurisdiction until a transfer order has been issued by the probate court and the circuit court has received a certified record, which would necessarily include the important pleadings that initiate the action. This appears to be different from the statutorily authorized removal of the administration of an estate, which is an existing proceeding, from the probate court by the circuit court, where the circuit court, once assuming jurisdiction by order, may thereafter direct the probate court to perform the ministerial duty of transferring necessary documentation. Ala. Code 1975, § 12-11-41. In any event, the jurisdictional requirements for the movement of matters between the

probate court and the circuit court are within the exclusive purview of the legislature and can be clarified by that body as it sees fit.

"This Court is duty bound to notice ex mero motu the absence of subject-matter jurisdiction." Stamps v. Jefferson Cnty. Bd. of Educ., 642 So. 2d 941, 945 n.2 (Ala. 1994) (emphasis added). See also Walker Cnty. Comm'n v. Kelly, 262 So. 3d 631, 637 (Ala. 2018) (same). The decision in Cook, in my opinion, incorrectly provides jurisdiction when it is denied by law.

This Court in Jones, supra, restated the requirements of § 43-8-198 as follows:

> "To comply with the statute, the following prerequisites must be met: (1) the will must not be admitted to probate, although it must be offered for probate before it can be contested ...; (2) the party seeking the transfer must file a written demand for the transfer in the probate court; (3) the transfer demand must be filed at the time of the filing of the will-contest complaint or other initial pleading; (4) the probate court must enter a written order transferring the will contest to the circuit court; (5) the probate court must certify the probate-court record pertaining to the will contest to the circuit-court clerk; (6) the circuit-court clerk shall docket the case in the circuit court; and (7) the circuit court must set the will contest for a trial at a regular or a special session of court."

282 So. 3d at 857-58. I read this discussion as merely summarizing the Code section and not holding that the items of the list are all jurisdictional prerequisites.

BOLIN, Justice (dissenting).

I disagree that the circuit court lacked subject-matter jurisdiction over the will contests because the probate court entered a written order transferring the will contests to the circuit-court clerk. Therefore, I respectfully dissent.

Probate courts have original and general jurisdiction over the probate of wills and over the "granting of letters testamentary and of administration." § 12-13-1(b)(2), Ala. Code 1975. Under Alabama law, a circuit court, under specified and explicit conditions, can obtain subject-matter jurisdiction over the contest of a will not yet admitted to probate. Section 43-8-190, Ala. Code 1975, allows for a contest to be filed in the probate court before the probate of a will. Section 43-8-198, Ala. Code 1975, which must be read in conjunction with 43-8-190, see Bardin v. Jones, 371 So. 2d 23 (Ala. 1979),[4] goes further to provide for the transfer of a will contest from the probate court, which has original

[4]Bardin construed former § 43-1-70 and former § 43-1-78, Ala. Code 1975, the predecessor statutes to § 43-8-190 and § 43-8-198, respectively.

jurisdiction of the proceedings, to the circuit court. In my special writing in Jones v. Brewster, 282 So. 3d 854, 861 (Ala. 2019), I noted that § 43-8-198 unambiguously describes the requirements necessary for the transfer of a nonprobated-will contest from the probate court to the circuit court, for the circuit court to adjudicate the contest issue only. Section 43-8-198 mandates that "the probate court, or the judge thereof, must enter an order transferring the contest to the circuit court of the county in which the contest is made, and must certify all papers and documents pertaining to the contest to the clerk of the circuit court...." The entry of the transfer order is a statutorily mandated judicial action, the absence of which results in no jurisdiction being transferred to and conferred in the circuit court. The certification of papers and documents for the circuit-court clerk is a ministerial function that neither confirms nor quickens the jurisdiction of the circuit court.

In the present case, the lack of certification of "papers and documents" did not deprive the circuit court of subject-matter jurisdiction. Any failure of the probate court to perform a ministerial function, such as certifying papers and documents, should be addressed

to the circuit-court clerk for remediation between the probate-court clerk's office and the circuit-court clerk's office. Similarly, our Supreme Court Clerk addresses any defects or failings in records presented to this Court on appeal; those appeals are not immediately dismissed for lack of subject-matter jurisdiction.

In Jones v. Brewster, supra, this Court set out seven requirements that must exist to comply with § 43-8-198:

> "(1) the will must not be admitted to probate, although it must be offered for probate before it can be contested; (2) the party seeking the transfer must file a written demand for the transfer in the probate court; (3) the transfer demand must be filed at the time of the filing of the will-contest complaint or other initial pleading; (4) the probate court[, or the judge thereof,] must enter a written order transferring the will contest to the circuit court; (5) the probate court[, or the judge thereof,] must certify the probate-court record pertaining to the will contest to the circuit-court clerk; (6) the circuit-court clerk shall docket the case in the circuit court; and (7) the circuit court must set the will contest for a trial at a regular or a special session of court."

282 So. 3d at 857-58 (internal citation omitted). In my opinion, as I outlined in my special writing in Jones, the only condition that is necessary from a jurisdictional standpoint to transfer a will contest from the probate court to the circuit court pursuant to §43-8-198 is the written

transfer order entered by the probate judge. Judges are authorized to enter orders, while the respective clerks' offices certify and transfer records.

I recognize that § 43-8-198 must be strictly construed, because probate statutes were unknown to the common law. The legislature requires that the certification of papers and documents should be to the circuit-court clerk. When the issue of a will contest is transferred from the probate court to the circuit court, after the circuit court determines whether the will is valid, the administration of the estate is returned to and conducted by the probate court. When a party removes the administration of an estate from the probate court to the circuit court under § 12-11-41, Ala. Code 1975, the filing of a petition for removal in the circuit court and the entry of an order of removal by that court are the prerequisites. If the legislature intended for certification of papers and documents, i.e., a record, to the circuit-court clerk to be a judicial action/jurisdictional requirement for a will contest, why would the legislature not make such a requirement necessary for the removal of the entire administration of the estate?

I recognize that the gradual development of probate law over many decades has often resulted in specialized procedural traps for both unwary practitioners and judges. However, the Alabama Law Institute has commissioned a standing committee to review and propose legislative changes that, I hope, will make probate law both easier and fairer for all.

Sellers, J., concurs.