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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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1210096

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Susan Hoff

v.

The Estate of Susan Bibb Kidd, deceased

Appeal from Jefferson Circuit Court  
(CV-20-191)

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1210098

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Eliot Hoff

v.

The Estate of Susan Bibb Kidd, deceased

Appeal from Jefferson Circuit Court  
(CV-20-162)

STEWART, Justice.

Susan Hoff and Eliot Hoff separately appeal from orders entered by the Jefferson Circuit Court ("the circuit court") in two different, but related, actions. Because the circuit-court actions each arise from an attempt to remove the administration of the estate of Susan Bibb Kidd, deceased ("the estate"), from the Jefferson Probate Court ("the probate court") to the circuit court, this Court has consolidated the appeals for the purpose of issuing a single opinion.

#### Facts and Procedural History

Susan Hoff ("Susan") and Eliot Hoff ("Eliot") are mother and son and the purported beneficiaries under a will executed by Susan Bibb Kidd ("Kidd"), the mother of Susan.<sup>1</sup> The record indicates that the probate

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<sup>1</sup>Eliot and Susan are proceeding without counsel in these appeals and have previously been before our appellate courts in related proceedings: Ex parte Hoff (No. 1200684, Aug. 5, 2021) (Ala. 2021) (petition denied); Hoff v. Estate of Kidd (No. 1200255, Feb. 26, 2021) (Ala. 2021) (appeal brought by Susan dismissed for having been taken from a nonfinal judgment and for failing to comply with Rule 2(a), Ala. R. App. P.); Ex parte Hoff (No. 1190218, Jan. 24, 2020) (Ala. 2020) (petition dismissed for failure to prosecute); Ex parte Hoff (No. 1140592, May 7, 2015) (Ala. 2015) (petition denied); Hoff v. Goyer, 107 So. 3d 1085 (Ala. 2012) (holding that Eliot had improperly attempted to remove a conservatorship proceeding involving Kidd pursuant to § 12-11-41, Ala. Code 1975, which applies to the estates of deceased persons, rather than

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proceedings related to the estate commenced in the probate court in 2011 and that those proceedings have remained pending.

On September 22, 2020, Eliot filed in the circuit court a "Verified Petition for Removal Pursuant to Ala. Code § 12-11-41," in which he asserted, among other things, that he was an heir of Kidd and that the estate could be better administered in the circuit court.<sup>2</sup> Although Eliot's signature appears on his removal petition, the signature is not notarized or signed under oath. Instead, Eliot submitted with his removal petition the following signed, but unsworn, "Declaration":

"I declare under penalty of perjury under the law of the State of Alabama that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"Executed on the 18th day of September, 2020 at Nassau, The Bahamas."

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pursuant to the appropriate statute, § 26-2-3, Ala. Code 1975); and Hoff v. Goyer, 160 So. 3d 768 (Ala. Civ. App. 2014).

<sup>2</sup>The circuit-court proceeding initiated by Eliot's petition was assigned case no. CV-20-162.

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Eliot attached to his removal petition a copy of Kidd's will and the case-action summary for the probate-court proceedings.<sup>3</sup> On October 28, 2020, Eliot filed a motion in which he asked the circuit court to issue a ruling or to set a hearing on his removal petition. The circuit court scheduled a hearing for March 3, 2021; however, Eliot filed a motion to continue, and the hearing was reset for July 7, 2021. That hearing was rescheduled at least two additional times because of the circuit court's scheduling conflicts. On October 19, 2021, after a hearing, the circuit court entered an order "denying" Eliot's removal petition, stating: "Upon consideration of the pleadings and arguments of the Pro Se Petitioner, the Court finds that this case can be better administered in the Probate Court."

Meanwhile, on November 13, 2020, while Eliot's removal petition was pending in the circuit court, Susan filed in the circuit court a verified petition for removal that was sworn to under oath and notarized.<sup>4</sup> On November 16, 2020, the circuit court entered an order granting Susan's

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<sup>3</sup>On October 9, 2020, Eliot electronically filed an another "Verified Petition for Removal" that contained the same "Declaration"; that filing appears to be identical to Eliot's first removal petition except that it was dated October 9, 2020.

<sup>4</sup>The circuit-court proceeding initiated by Susan's petition was assigned case no. CV-2020-191.

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removal petition. Later that same day, however, the circuit court entered an order in which it vacated its previous order granting Susan's removal petition, directed Susan to serve notice of her removal petition to all interested parties, and indicated that it would set the matter for a hearing. On November 30, 2020, Susan filed a motion seeking to have the circuit court reconsider its order vacating the order of removal, asserting that she had a right to removal and that notice was not required. The circuit court scheduled a hearing, and, in response, Susan filed a motion asking the circuit court to comply with § 12-11-41, Ala. Code 1975, which addresses the removal of the administration of a decedent's estate from a probate court to a circuit court. On December 21, 2020, Susan filed a notice of appeal, challenging the order vacating the order of removal, to the Court of Civil Appeals, which transferred the appeal to this Court based on a lack of subject-matter jurisdiction. This Court dismissed her appeal on February 26, 2021, after Susan failed to respond to an order from this Court to show cause why her appeal should not be dismissed as having been taken from a nonfinal order and because of Susan's failure to comply with Rule 2(a), Ala. R. App. P. Hoff v. Estate of Kidd (No. 1200255, Feb. 26, 2021) (Ala. 2021).

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On June 7, 2021, Susan filed a motion in the circuit court seeking an order removing the administration of the estate. The following day, the circuit court entered an order allowing Susan 30 days in which to comply with the circuit court's November 16, 2020, order requiring Susan to provide notice to interested parties. On September 1, 2021, the circuit court entered an order permitting Susan 14 days to comply with the November 16, 2020, order. Both orders warned Susan that noncompliance could result in dismissal of her removal petition. On October 18, 2021, the circuit court entered an order dismissing Susan's removal petition without prejudice, "[f]or failure to comply with th[e] Court's Orders of November 16, 2020, June 8, 2021 and September 1, 2021."

On October 21, 2021, Susan and Eliot each filed a notice of appeal to the Alabama Court of Civil Appeals; that court transferred the appeals to this Court based on a lack of appellate jurisdiction.

## Discussion

### I. Eliot's Appeal (Appeal No. 1210098)

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Eliot appeals from the circuit court's order "denying" his removal petition. A request to remove the administration of a decedent's estate from the probate court to the circuit court is governed by § 12-11-41, Ala. Code 1975, which 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."

Initially, we note that there is no statutory provision authorizing a circuit court to "deny" a removal petition filed pursuant to § 12-11-41. A party seeking the removal of the administration of an estate must file in the circuit court a sworn petition demonstrating that (1) the party is an "heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed" and that (2) "in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court." § 12-11-41. "Once a party seeking to remove

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the administration of an estate from the probate court to the circuit court has satisfied the pleading requirements of § 12-11-41, the circuit court must enter an order removing the administration of an estate from the probate court to the circuit court." Daniel v. Moye, 224 So. 3d 115, 128 (Ala. 2016). The circuit court has no discretionary authority concerning the application of § 12-11-41 when a petitioner has complied with the statutory requirements.

After the circuit court enters an order of removal in accordance with its statutory duty, the administration of an estate may thereafter be remanded to the probate court under circumstances provided in § 12-11-41.1, Ala. Code 1975. See Ex parte McLendon, 824 So. 2d 700, 704 (Ala. 2001) (explaining that a circuit court may retransfer the administration of an estate "upon a motion by the opponent of the transfer, and a finding by the circuit court that the party effecting removal lacked standing under the statute").

Although the order Eliot appeals from is framed by the circuit court as "denying" Eliot's removal petition, under the circumstances that order was, essentially, equivalent to an order remanding the administration of the estate to the probate court. See Ex parte Kelly, 243 Ala. 184, 187, 8



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So. 2d 855, 857 (1942) ("The effect of the decree appealed from -- remanding the administration of the estate to the probate court -- put this branch of the case out of the circuit court, and was such final decree as will support the appeal.").

Eliot, relying on Ex parte Terry, 957 So. 2d 455 (Ala. 2006), and Ex parte McLendon, 824 So. 2d 700 (Ala. 2001), argues that the circuit court was required to enter an order of removal when he made a prima facie showing that he was entitled to the removal of the administration of the estate under § 12-11-41. The estate argues that Eliot did not comply with the statutory requirements of § 12-11-41 because, it says, Eliot did not file a sworn petition and, thus, that the circuit court did not acquire subject-matter jurisdiction over the petition. Eliot contends in his reply brief that, under the Alabama Uniform Unsworn Foreign Declarations Act ("the unsworn-declarations act"), § 12-21-80 et seq., Ala. Code 1975, his removal petition, which was accompanied by a signed but unsworn declaration, constitutes a "sworn petition" in compliance with the requirements of § 12-11-41. The estate argues that the unsworn-declarations act does not apply to "sworn petitions."

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Under § 12-21-83(a), Ala. Code 1975, an unsworn declaration will have the same effect as a sworn declaration if the unsworn declaration (1) is made "by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States," § 12-21-82, (2) is signed "under penalty of perjury under the law of the State of Alabama that the foregoing is true and correct," (3) states that the declarant is "physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States," and (4) provides the date, time, and physical location of the execution. § 12-21-85, Ala. Code 1975. A "sworn declaration" is defined as "a declaration in a signed record given under oath" and "includes a sworn statement, verification, certificate, and affidavit." § 12-21-81(6), Ala. Code 1975. Section 12-21-83(b) provides a list of contexts in which the unsworn-declarations act is inapplicable, none of which are applicable here.

Moreover, the Comment to § 12-21-83 explains that an unsworn declaration satisfying the requirements of the unsworn-declarations act may be used "in a state proceeding or transaction whenever other state

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law authorizes the use of a sworn declaration" or "if other state law[] permits the use of either sworn testimony or an affidavit." The Comment further explains that "[t]he use of unsworn declarations is not limited to litigation" and that they may be used in "civil, criminal and regulatory proceedings and settings." Accordingly, we determine that the unsworn-declarations act is applicable to pleadings and petitions that are required to be sworn. See, e.g., Bessenyei v. Vermillion, Inc. (C.A. No. 7572-VCN, Nov. 16, 2012) (Del. Ch. 2012) (memorandum opinion) (not published in Atlantic Reporter) (noting that Delaware's version of the Uniform Unsworn Foreign Declarations Act "provides an alternate avenue for plaintiffs physically located outside the boundaries of the United States to verify their complaints and pleadings under" Delaware's Chancery Court Rules), *aff'd*, 67 A.3d 1022 (Del. 2013); United States v. 8 Gilcrease Lane, Quincy, Florida 32351, 587 F. Supp. 2d 133, 138-39 (D.D.C. 2008) (holding that statement made in substantial compliance with similarly worded federal unsigned-declarations act, 28 U.S.C. § 1746, constituted proper "verification" as required to institute federal forfeiture action).

Eliot's unsworn declaration stated that it was signed under penalty of perjury under the law of the State of Alabama and that he was

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physically located outside the United States, and it included the date on which and location where it was executed. Eliot's unsworn declaration substantially complies with the form provided in § 12-21-85, and, as a result, Eliot's unsworn declaration has the same effect as a sworn declaration. Therefore, Eliot's removal petition, accompanied by his declaration, constitutes a "sworn petition" as required by § 12-11-41.

Because Eliot filed a sworn removal petition that included a statement regarding his standing to bring the removal petition as an heir of Kidd and a statement that, in his opinion, the estate would be better administered in the circuit court, Eliot's removal petition satisfied the requirements of § 12-11-41. Accordingly, the circuit court was required to enter an order of removal. See Daniel v. Moyer, 224 So. 3d at 131 (holding that, because the pleading requirements of § 12-11-41 were satisfied, the circuit court erred in failing to enter an order removing the administration of an estate from the probate court to the circuit court); see also Ex parte Clayton, 514 So. 2d 1013, 1018 (Ala. 1987) ("Upon the timely filing of a sworn petition averring" that in the opinion of the petitioner the estate would be better administered in the circuit court, "the court, as a matter of law, must grant removal."). Therefore, the

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circuit court's October 19, 2021, order "denying" Eliot's removal petition is reversed, the cause is remanded, and the circuit court is instructed to enter an order removing the administration of the estate from the probate court to the circuit court.

## II. Susan's Appeal (Appeal No. 1210096)

Turning to Susan's appeal, Susan argues, among other things, that the circuit court erred in imposing a "notice" requirement for her removal petition and that the October 18, 2021, order purporting to dismiss her petition, therefore, violated her right to due process. However, we do not reach Susan's arguments because our decision directing the circuit court to grant Eliot's removal petition effectively awards Susan the relief she seeks, i.e., the removal of the administration of the estate. See Ex parte Clayton, 514 So. 2d at 1017 ("When the administration of the estate is removed, all aspects of the administration must be removed."). Accordingly, the issues raised by Susan on appeal have been rendered moot and her appeal is, therefore, due to be dismissed. See Case v. Alabama State Bar, 939 So. 2d 881, 884 (Ala. 2006) ("An action that originally was based upon a justiciable controversy cannot be maintained

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on appeal if the questions raised in it have become moot by subsequent acts or events.").

### Conclusion

We reverse the circuit court's order "denying" Eliot's removal petition and remand the cause with instructions for the circuit court to enter an order removing the administration of the estate from the probate court. We dismiss Susan's appeal as moot.

1210096 -- APPEAL DISMISSED.

1210098 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker C.J., and Shaw, Bryan, Sellers, and Mendheim, JJ., concur.

Bolin and Wise, JJ., concur in the result.