

# SUPREME COURT OF ALABAMA

## In re Estate of Eckert

514 So. 2d 1013 (Ala. 1987) · Decided September 25, 1987

### SUMMARY

The Alabama Supreme Court denied a petition for a writ of mandamus challenging the removal of an estate administration from probate court to circuit court. The court held that invoking equity jurisdiction under a Jefferson County local act did not restrict removal under Alabama Code § 12-11-41, and that removal during trial was timely because no final settlement had occurred. The court also held that notice was not required because removal was a matter of right upon filing a compliant sworn petition.

### CASE DETAILS

|                       |                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Alabama                                                                                                                                                                |
| WRITING FOR THE COURT | Adams, Justice; Torbert, Chief Justice; Jones, Justice; Shores, Justice; Steagall, Justice                                                                                              |
| JURISDICTION          | Alabama                                                                                                                                                                                 |
| DECIDED               | September 25, 1987                                                                                                                                                                      |
| DISPOSITION           | writ_denied                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Petition for a writ of mandamus challenging a circuit judge's order removing administration of an estate from the Jefferson County Probate Court to the Jefferson County Circuit Court. |
| STANDARD OF REVIEW    | Mandamus is an extraordinary remedy available only upon a clear abuse of discretion in an arbitrary and capricious manner and a clear and indisputable right to the requested result.   |
| PRECEDENTIAL VALUE    | Published Alabama Supreme Court opinion                                                                                                                                                 |
| PARTIES               | David Clayton, Kathy Clayton v. Marvin Cherner, Circuit Judge, Jefferson County, Alabama                                                                                                |

### TOPICS

- probate procedure
- estate administration
- appellate procedure
- statutory interpretation
- remedies

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Act No. 1144, which granted concurrent equity jurisdiction to the Jefferson County Probate Court, limited or conflicted with the administratrix's right to remove estate administration to circuit court under section 12-11-41.
2. Whether removal was timely when the petition was filed during trial on a claim against the estate but before final settlement.
3. Whether the circuit judge abused his discretion by ordering removal without notice to the claimants.

## HOLDINGS

1. Act No. 1144 did not limit or change the right to remove estate administration under section 12-11-41; the local act's grant of concurrent equity jurisdiction was cumulative and expressly preserved removal rights.
2. A petition to remove estate administration is timely when filed at any time before final settlement, including during trial on a claim against the estate, unless the probate court has taken steps toward or completed a final settlement.
3. Notice to the claimants was not required before removal under section 12-11-41 because removal is a matter of right upon the timely filing of a qualifying sworn petition.
4. The Claytons were not entitled to mandamus because they failed to establish a clear abuse of discretion or a clear and indisputable right to prevent removal.

## KEY QUOTATIONS

*“There is no ambiguity in the language of the local act; thus, there is no need for this Court to go beyond the face of the statute.” (1016)*

*“Administration of the estate is a broad concept involving all matters necessary to reach a final settlement of the estate.” (1017)*

*“Upon the timely filing of a sworn petition averring these facts, the court, as a matter of law, must grant removal. Since removal is a matter of right, notice is unnecessary.” (1018)*

## FACTUAL BACKGROUND

The Claytons asserted a breach-of-warranty claim arising from a contract involving the decedent, his wife, and the Claytons against the estate in probate court. They later amended the claim to invoke the probate court's equity jurisdiction under Act No. 1144 and to seek \$100,000 in damages from the administratrix individually. After trial began and continued for about three hours, the administratrix filed a sworn petition and obtained an order removing administration of the estate to circuit court before the probate court had entered a final settlement.

## PROCEDURAL HISTORY

The Claytons filed a breach-of-warranty claim against the estate in the Jefferson County Probate Court and later invoked that court's equity jurisdiction under a local act. After approximately three hours of trial, the administratrix obtained an ex parte order removing administration of the estate to circuit court under section 12-11-41 of the Alabama Code. The Claytons petitioned the Supreme Court of Alabama for mandamus, arguing that removal was unauthorized, untimely, and improperly granted without notice.

## DISPOSITION

writ\_denied

## CASES CITED

- Ex parte Nelson, 448 So. 2d 339, 340 (Ala. 1984)
- Ross v. Luton, 456 So. 2d 249 (Ala. 1984)
- Ex parte Hartford Insurance Co., 394 So. 2d 933 (Ala. 1981)
- Ex parte Wilson, 408 So. 2d 94 (Ala. 1981)
- Ex parte Thompson, 474 So. 2d 1091 (Ala. 1985)
- Ex parte Southway Discount Center, Inc., 445 So. 2d 898 (Ala. 1984)
- Mobbs v. Scott, 233 Ala. 70, 169 So. 698 (1936)
- Ex parte McLendon, 212 Ala. 403, 102 So. 696 (1924)
- Crossland v. First National Bank of Montgomery, 233 Ala. 432, 172 So. 255 (1937)
- Culp v. Godwin, 295 Ala. 316, 329 So. 2d 88 (1976)
- Wilkerson v. Hagan, 265 Ala. 515, 92 So. 2d 901 (1957)
- Johnson v. Johnson, 252 Ala. 366, 41 So. 2d 287 (1949)
- Brewer v. Brewer, 250 Ala. 658, 35 So. 2d 557 (1948)
- White v. Hilbish, 282 Ala. 498, 213 So. 2d 230 (1968)
- Dooley v. Dooley, 205 Ala. 281, 87 So. 545 (1921)