

SUPREME COURT OF ALABAMA

McElroy v. Hubbard Properties, Inc.

205 So. 3d 1211 (Ala. 2016) · Decided March 4, 2016

SUMMARY

The Alabama Supreme Court held that a wrongful-death action filed by a person who had not been appointed the decedent's personal representative was a legal nullity. Because the action was void from its inception, the later substitution of the appointed administratrix could not cure the defect, and the court granted mandamus directing entry of summary judgment for the defendants.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Stuart; Bolin; Parker; Main; Shaw; Moore; Murdock; Wise; Bryan
JURISDICTION	Alabama
DECIDED	March 4, 2016
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The defendants petitioned for a writ of mandamus directing the Jefferson Circuit Court to vacate its order denying their motion for summary judgment and to enter summary judgment in their favor. They argued that the wrongful-death action was a legal nullity because it was filed by a person who had not been appointed the decedent's personal representative.
STANDARD OF REVIEW	Mandamus is a drastic and extraordinary remedy available only upon a clear legal right, an imperative duty accompanied by refusal to act, lack of another adequate remedy, and properly invoked jurisdiction. Although denial of summary judgment ordinarily is not reviewable by mandamus, mandamus review is available when the petitioner challenges the trial court's subject-matter jurisdiction based on the plaintiff's lack of standing.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	Hubbard Properties, Inc., Warrior Gardens, LLC v. Elizabeth W. McElroy, as administratrix of the estate of Louis Chatman

TOPICS

writ of certiorari

appellate procedure

summary judgment

wrongful death

civil procedure

PRACTICE AREAS

Wrongful death

Civil procedure

Appellate procedure

Torts

QUESTIONS PRESENTED

1. Whether a wrongful-death action filed by a person who had not been appointed executor or administrator of the decedent's estate is a legal nullity.
2. Whether substitution of the properly appointed administratrix as plaintiff can cure the defective filing or permit relation back under Rule 15(c), Alabama Rules of Civil Procedure.
3. Whether mandamus is available to review the denial of summary judgment when the defendants challenge the plaintiff's standing and the trial court's subject-matter jurisdiction.

HOLDINGS

1. Only the personal representative of a decedent's estate—an executor or administrator—may bring an action under Alabama's wrongful-death statute. A suit filed by a person who has not been appointed executor or administrator is a legal nullity.
2. Substitution of the properly appointed administratrix as plaintiff cannot cure a wrongful-death action that was a nullity when filed; the doctrine of relation back under Rule 15(c) does not apply.
3. Mandamus review was available because the defendants challenged the plaintiff's standing and the trial court's subject-matter jurisdiction, presenting an exception to the general rule that denial of summary judgment is reviewable only on appeal.

KEY QUOTATIONS

“A wrongful death action is purely statutory; no such action existed at common law. Section 6-5-410 provides that the personal representative of the deceased may bring a wrongful death action.” (1213)

“Since he did not qualify under § 6-5-410 as a personal representative this suit was a nullity. Therefore, the doctrine of relation back, found in Rule 15(c), [Ala. R. Civ. P.], does not apply.” (1214)

FACTUAL BACKGROUND

Louis Chatman died in a June 27, 2011, fire at an apartment owned and operated by the defendants. The Jefferson Probate Court appointed Elizabeth W. McElroy as administratrix of Louis's estate on June 11, 2013. Fifteen days later, Carolyn Chatman filed a wrongful-death action without having been appointed executor or administrator, and the circuit court later substituted McElroy as plaintiff.

PROCEDURAL HISTORY

Carolyn Chatman filed a wrongful-death action purporting to act as attorney in fact for Louis Chatman. After Elizabeth W. McElroy had been appointed administratrix of Louis's estate, the Jefferson Circuit Court granted a motion substituting McElroy as plaintiff. The trial court later denied the defendants' motion for summary

judgment. The Alabama Supreme Court granted mandamus relief, directed the trial court to vacate the denial, and ordered entry of summary judgment for the defendants.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Jefferson Circuit Court was directed to vacate its order denying the defendants' motion for summary judgment and to enter summary judgment in favor of the defendants.

CASES CITED

- Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)
- Ex parte Ziglar, 669 So. 2d 133, 134 (Ala. 1995)
- Ex parte Carter, 807 So. 2d 534, 536 (Ala. 2001)
- Ex parte McWilliams, 812 So. 2d 318, 321 (Ala. 2001)
- Ex parte Liberty Nat'l Life Ins. Co., 825 So. 2d 758, 761-62 (Ala. 2002)
- Ex parte Kohlberg Kravis Roberts & Co., L.P., 78 So. 3d 959, 965-66 (Ala. 2011)
- Ex parte HealthSouth Corp., 974 So. 2d 288, 292 (Ala. 2007)
- Ex parte Rhodes, 144 So. 3d 316, 317-18 (Ala. 2013)
- Waters v. Hipp, 600 So. 2d 981, 982 (Ala. 1992)
- Simmons v. Pulmosan Safety Equipment Corp., 471 F. Supp. 999 (S.D. Ala. 1979)
- Hatas v. Partin, 278 Ala. 65, 175 So. 2d 759 (1965)
- Downtown Nursing Home, Inc. v. Pool, 375 So. 2d 465, 466 (Ala. 1979)
- Ex parte Tyson Foods, Inc., 146 So. 3d 1041, 1042-43 (Ala. 2013)

OPINION

PER CURIAM.

PER CURIAM. Hubbard Properties, Inc., and Warrior Gardens, LLC (“the defendants”), filed a petition for a writ of mandamus requesting that this Court direct the Jefferson Circuit Court to vacate its order denying their motion for a summary judgment and to enter a summary judgment in their favor on the ground that the action filed against them is a nullity.

We grant the petition and issue the writ. Facts and Procedural History Louis Chatman was married to Carolyn Chatman and was a resident of the Warri- or Gardens Apartments, which the defendants owned and operated. On June 27, 2011, there was a fire in the apartment where Louis resided. He was not able to escape and ultimately died in the fire.

The Jefferson Probate Court issued letters of administration regarding Louis's estate to Elizabeth W. McElroy, the county administrator, on June 11, 2013. Nevertheless, on June 26, 2013, Carolyn, purporting to act as the "attorney in fact for Louis Chatman, an individual," filed a wrongful-death action against Hubbard Properties, Inc., Warrior Gardens, LLC, and various fictitiously named defendants.

The complaint alleged that, as a proximate result of the defendants' negligence and/or wantonness, Louis suffered injuries that resulted in his death. On January 23, 2014, Carolyn filed a motion to substitute parties, seeking to substitute Elizabeth W. McElroy, as administratrix of the estate of Louis Chatman, as the plaintiff.

The trial court granted the motion that same day. On January 13, 2015, the defendants filed a motion for a summary judgment. After McElroy responded, the trial court denied the motion for a summary judgment. This petition followed. Standard of Review "The writ of mandamus is a drastic and extraordinary writ, to be "issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court." Ex parte United Serv.

Sta*1213tions, Inc., 628 So.2d 501, 503 (Ala.1993); see also Ex parte Ziglar, 669 So.2d 133, 134 (Ala.1995).’ Ex parte Carter, [807 So.2d 534,] 536 [(Ala.2001)].” “Ex parte McWilliams, 812 So.2d 318, 321 (Ala.2001). “ ‘ “Subject to certain narrow exceptions..., we have held that, because an ‘adequate remedy’ exists by way of an appeal, the denial of a motion to dismiss or a motion for a summary judgment is not reviewable by petition for writ of mandamus.” Ex parte Liberty Nat’l Life Ins.

Co., 825 So.2d 758, 761-62 (Ala.2002).’ “Ex parte Kohlberg Kravis Roberts & Co., L.P., 78 So.3d 959, 965-66 (Ala.2011). ‘Mandamus review is available where the petitioner challenges the subject-matter jurisdiction of the trial court based on the plaintiffs alleged lack of standing to bring the lawsuit.’ Ex parte HealthSouth Corp., 974 So.2d 288, 292 (Ala.2007).” Ex parte Rhodes, 144 So.3d 316, 317-18 (Ala.2013).

Discussion The defendants argue that the trial court should have granted their motion for a summary judgment alleging that the action Carolyn filed is a nullity. Specifically, they contend that only the administrator or executor of a decedent's estate can maintain a wrongful-death action and that Carolyn had never been appointed Louis's administrator or executor.

In fact, the defendants point out that McElroy was appointed the administratrix of Louis's estate before Carolyn filed the action. Therefore, they conclude that, because Carolyn did not have the requisite authority to pursue a wrongful-death action on behalf of Louis's heirs, see § 6-5-410, Ala.

Code 1975, the action she filed is a legal nullity and a substitution of MeElroy as the plaintiff was not sufficient to overcome that fatal error.

In *Waters v. Hipp*, 600 So.2d 981, 982 (Ala.1992), this Court explained: “A wrongful death action is purely statutory; no such action existed at common law. *Simmons v. Pulmosan Safety Equipment Corp.*, 471 F.Supp. 999 (S.D.Ala.1979). Section 6-5-410 provides that the personal representative of the deceased may bring a wrongful death action. A ‘personal representative,’ for the purposes of § 6-5-410, is an executor or an administrator.

Hatas v. Partin, 278 Ala. 65, 175 So.2d 759 (1965). One who sues under this section without having been appointed executor or administrator does not qualify under this section as a personal representative, and the suit is a nullity. *Downtown Nursing Home, Inc. v. Pool*, 375 So.2d 465 (Ala.1979), cert. denied, 445 U.S. 930, 100 S.Ct. 1318, 63 L.Ed.2d 763 (1980).” In this case, the undisputed evidence establishes that MeElroy was appointed the administratrix of Louis’s estate 15 days before Carolyn filed the wrongful-death action.

Therefore, Carolyn was without the authority to file the wrongful-death action, and that action is a nullity. See *Ex parte Tyson Foods, Inc.*, 146 So.3d 1041, 1042-43 (Ala.2013) (“The statute providing for a wrongful-death action, § 6-5-410(a), Ala.Code 1975, allows only a personal representative of the deceased’s estate to bring such an action.”); see also *Waters*, supra.

Finally, because the action is a nullity, MeElroy could not be substituted as the plaintiff. See generally *Downtown Nursing Home, Inc. v. Pool*, 375 So.2d 465, 466 (Ala.1979) (“In the present case, Johnnie E. Parker filed suit without having been appointed executor or administrator. Since he did not qualify under § 6-5-410 as a personal representa*1214tive this suit was a nullity.

Therefore, the doctrine of relation back, found in Rule 15(c), [Ala. R. Civ. P.], does not apply.”). Conclusion For the above-stated reasons, we conclude that the action Carolyn filed is a nullity and that the substitution of McEl-roy as the plaintiff was not sufficient to overcome that fatal error.

Therefore, we grant the petition for the writ of mandamus and direct the trial court to vacate its order denying the defendants’ motion for a summary judgment and to enter a summary judgment in their favor. PETITION GRANTED; WRIT ISSUED. STUART, BOLIN, PARKER, and MAIN, JJ., concur. SHAW, J., concurs specially. MOORE, C.J., and MURDOCK, WISE, and BRYAN, JJ., dissent.