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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 11-987

JAMES E. A. MAXWELL AND JULIA INEZ MAXWELL HILL APPELLANTS	**Opinion Delivered** February 22, 2012
V.	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTEENTH DIVISION, [NO. PR2008-956]
ESTATE OF JAMES ARTHUR MAXWELL APPELLEE	HONORABLE VANN SMITH, JUDGE
	REVERSED AND REMANDED

DOUG MARTIN, Judge

Appellant James E.A. Maxwell appeals from the decision of the Pulaski County Circuit Court granting a motion to remove Julia Maxwell Hill as executrix of the Estate of James A. Maxwell. Maxwell argues that he was entitled to notice of both the motion and the hearing on that motion. He further contends that the circuit court erred in failing to consider the wishes of the testator in appointing a successor administrator. We agree with his first argument and reverse and remand.

James A. Maxwell died testate in Hunt County, Texas, on September 21, 2006. His will was admitted to probate in Texas on February 14, 2007, and letters testamentary were issued to his daughter, Julia Hill, that same day. On June 4, 2008, Hill, through counsel, filed a petition for probate of a foreign will and appointment of personal representative in Pulaski County Circuit Court in order to pursue an ancillary administration of James A. Maxwell's estate in Arkansas, which consisted of two parcels of real estate and other property. The

Pulaski County court entered an order on June 9, 2008, granting Hill's petition and appointing her personal representative.

On July 13, 2010, Hill's attorney, Richard Hatfield, filed a motion to withdraw as her attorney, citing a "lack of cooperation" that had caused him to be unable to perform his duties. In addition, Hatfield sought attorney's fees for the work he had performed for the estate up to that point. The circuit court set a hearing on Hatfield's motion for September 29, 2010.

On September 8, 2010, James E.A. Maxwell filed a motion to intervene in the proceedings. The circuit court orally granted Maxwell's motion at the September 29 hearing; further, in a September 30, 2010 order permitting Hatfield to withdraw as counsel, the court specifically found that Maxwell, "an heir of the decedent and devisee under the Will admitted to probate, is permitted to intervene herein." In that order, the court also determined that a later hearing would be held to set the amount of fees to be awarded to Hatfield. That hearing was held on December 10, 2010, at which time the circuit court awarded Hatfield $11,293.81 in attorney's fees. The court's order further noted that the award would constitute a lien on the estate and a lien on the estate's real property located in the Prospect Terrace neighborhood in Little Rock until the fee was paid. Hatfield filed a lis pendens providing notice of the liens on December 17, 2010.

On February 3, 2011, Hatfield filed a petition noting that he had not yet been paid and seeking an order requiring Hill to sell the Prospect Terrace property. The court entered an order on March 17, 2011, granting Hatfield's petition and further directing that, if

Hatfield's fees were not paid within thirty days, the property would be sold pursuant to the probate code.

Hatfield was not paid, and the property was not sold in a timely fashion. Hatfield filed a petition on April 25, 2011, seeking to remove Hill as executrix of the estate, hold Hill in contempt, and appoint a special administrator. Hatfield's petition also sought an additional $4,539.01 in attorney's fees.

The circuit court held a hearing on Hatfield's petition on June 7, 2011. At the hearing, the court asked whether everyone had been given notice of the hearing. Hatfield replied that he notified Hill because the petition was an action to remove her as executrix of the estate. Hatfield stated further, however, that he did not notify Maxwell, even though Maxwell had signed the response to Hatfield's motion to remove Hill, "because [Maxwell] was not an interested person in the sense that he was not asked to be removed." The court proceeded to hear Hatfield's arguments concerning the petition to remove Hill, and on June 17, 2011, the court entered an order in which it granted Hatfield's petition, removed Hill as personal representative and held her in contempt, appointed Claiborne Patty as substitute administrator, and awarded Hatfield additional attorney's fees of $4,539.01. In addition, the court's order specifically found, without stating any reason, that "James Maxwell is not entitled to Notice of Hearing."

Maxwell filed a timely notice of appeal on July 17, 2011, and now raises two arguments for reversal: 1) the trial court erred in finding that he was not entitled to notice of the June 7, 2011 hearing; and 2) the trial court erred in failing to consider the intention

of the testator in appointing a successor administrator. Probate cases are reviewed de novo on appeal, and we will not reverse the probate court's findings of fact unless they are clearly erroneous. *Snowden v. Riggins*, 70 Ark. App. 1, 13 S.W.3d 598 (2000).

In his first point on appeal, Maxwell contends that he was made a party to the action when the circuit court granted his motion to intervene, and thus, as a party, he was entitled to service upon him of all pleadings and notices of hearings pursuant to Arkansas Rule of Civil Procedure 5(a). In pertinent part, Rule 5(a) provides that, "[e]xcept as otherwise provided in these rules, every pleading and every other paper, including all written communications with the court, filed subsequent to the complaint, except one which may be heard ex parte, shall be served upon each of the parties." Ark. R. Civ. P. 5(a) (2011).

One who is a party to an action should receive notice of pleadings filed within the course of the original action. *See Maxwell v. State*, 343 Ark. 154, 158, 33 S.W.3d 108, 110 (2000). One may become a party by intervention. *See* Ark. R. Civ. P. 24 (2011); *Phillipy v. O'Reilly*, 95 Ark. App. 264, 235 S.W.3d 348 (2006). Intervention, of course, is how Maxwell became a party in the instant case.[1] As a party, Maxwell was thus entitled to notice of the hearing on Hatfield's petition to remove Hill as executrix, and the circuit court was wrong to conclude that he was not entitled to that notice.

[1]Moreover (although he does not raise the issue), Maxwell was an "interested person" as defined in the Arkansas Probate Code. *See* Ark. Code Ann. § 28-1-102(11) (Repl. 2004) ("'Interested persons' includes any heir, devisee, spouse, creditor, or any other having a property right, interest in, or claim against the estate being administered, and a fiduciary.").

We note that Maxwell apparently had notice of the petition to remove Hill: even though Maxwell was not served with a copy of the petition, *both* he and Hill filed an answer to it; thus, we believe he had notice of the pleading. The problem, however, is that the petition does not ask for a hearing on a specific date, and while a notice of hearing was sent to Hill informing her that the hearing was set for June 7, 2011, both Hatfield and the circuit court explicitly acknowledged at the hearing that Maxwell was not notified of the hearing. Moreover, the court's order expressly stated that Maxwell was not *entitled* to notice of the hearing. The court's conclusion on this issue was erroneous, and we reverse the circuit court's order of June 17, 2011, and remand for further proceedings with specific direction that Maxwell be given notice of all pleadings and hearings.

We also note that, in his second argument on appeal, Maxwell argues that the circuit court erred in appointing Claiborne Patty as administrator of the estate after removing Hill, because James A. Maxwell's will expressly named another individual as executor.[2] Here, the circuit court appears to have ignored the specific directions of the decedent as set out in his will. Upon remand, we remind the circuit court that, in the interpretation of wills, the paramount principle is that the intent of the testator governs, and the testator's intent is to

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[2]Paragraph V.A. of the will provides as follows:

> I hereby nominate, constitute and appoint my daughter, JULIA INEZ MAXWELL HILL, as Independent Executor of my estate without bond of this my Last Will and Testament. If she predeceases me or is otherwise unable to discharge her duties or fails or refuses to qualify as Independent Executor, I then appoint my son-in-law, STEVEN LOREN HILL, to serve as Independent Executor with all of the powers granted in paragraph 6 thereof.

be gathered from the four corners of the instrument itself. *Carmody v. Betts*, 104 Ark. App. 84, 289 S.W.3d 174 (2008).

Reversed and remanded.

PITTMAN and GLADWIN, JJ., agree.

James E.A. Maxwell and *Julia Inez Hill*, pro se appellants.

No response.