Cite as 2013 Ark. App. 232

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA12-362

SHERALL DEAN McCALL; REBA GAYLE McCALL SISCO; RICHARD MARVIN McCALL; JAMES PAUL McCALL; JESSE LEE McCALL; MARY JACQULINE McCALL WEEMS; SARITA SUE McCALL (COX) MEACHAM; CLARA JEANNE McCALL WILLIAMS; AND RANDI COLLEEN McCALL SCOTT APPELLANTS V. DONNA KAYE McCALL GRUNWALD, INDIVIDUALLY, AND AS TRUSTEE OF THE McCALL FAMILY REVOCABLE LIVING TRUST U/D JULY 19, 1994; JACOB DANIEL GRUNWALD; AND JOSHUA DAVID GRUNWALD APPELLEES	**Opinion Delivered** April 10, 2013 APPEAL FROM THE CARROLL COUNTY CIRCUIT COURT [NO. PR 2011-10] HONORABLE GERALD K. CROW, JUDGE APPEAL DISMISSED

RHONDA K. WOOD, Judge

This is a dispute among ten siblings over the administration of a trust established by their parents. The Carroll County Circuit Court granted summary judgment and dismissed appellants'[1] petition against appellee Donna Grunwald.[2] Although appellants argue ten points

[1]Appellants are Sherall Dean McCall, Reba Gayle McCall Sisco, Richard Marvin McCall, James Paul McCall, Jesse Lee McCall, Mary Jacquline McCall Weems, Sarita Sue McCall (Cox) Meacham, Clara Jeanne McCall Williams, and Randi Colleen McCall Scott.

[2]Grunwald's children, Jacob Grunwald and Joshua Grunwald, are named defendants and appellees. However, there were no allegations involving Jacob or Joshua Grunwald in the

on appeal, we must dismiss this appeal without addressing the merits because the order from which the appeal is taken is not final due to an unresolved claim.

Jack Gail McCall and Vella Marie McCall established the McCall Family Revocable Living Trust, u/d/t July 19, 1994, as the settlors and initial trustees, with Grunwald named as successor Trustee. It was the settlors' intention that all property, real or personal, that they then owned or acquired in the future become part of the trust.

While both settlors were alive, either could amend or revoke the trust in whole or in part, but only as to that settlor's interest in the trust. After the death of one of the settlors, the surviving settlor could amend or revoke the trust, or direct the trustee to distribute to him or her any or all of the corpus or accumulated income of the trust. Upon the death of both settlors, the trustee was to hold the trust estate for the benefit and use of the settlors' children and grandchildren unless or until it became necessary to dissolve the trust, at which time the estate was to be distributed in equal shares to the settlors' children.

On June 8, 1995, the settlors conveyed 154 acres to their daughters Sarita Cox and Grunwald. By deed dated February 13, 1996, Cox, Grunwald, and Grunwald's husband conveyed the real property to the trust.

Jack McCall died in January 1998. In December 2005, Vella McCall, as surviving trustee, executed a quitclaim deed transferring the real property to herself and Grunwald as joint tenants with rights of survivorship. She also executed a document purporting to revoke the trust.

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petition. For ease of writing, we discuss the matter as if Donna Grunwald were the sole defendant and appellee unless the context requires otherwise.

On February 9, 2006, appellants filed an action (No. CIV 2006-14, referred to as the deed litigation) against Vella McCall and Grunwald. The complaint alleged undue influence on the part of Grunwald and the incapacity of Mrs. McCall. In addition to requesting a return of the real property to the trust, appellants sought the appointment of a successor trustee in place of Grunwald. Vella McCall died on February 26, 2006.

By order entered on July 9, 2010, the deed litigation was resolved. The circuit court found that there was no undue influence on the part of Grunwald. However, the court found that Vella McCall was incapacitated at the time she executed the deed and revocation of trust. The court declared title to the property was "vested in the Trust and any valid amendments." Grunwald was not replaced as successor trustee. No appeal was taken from this order.

On March 2, 2011, appellants filed the present action seeking an accounting for the trust, the removal of Grunwald as successor trustee, the appointment of a new successor trustee, and the termination of the trust.

Grunwald filed a response to the petition in which she asserted that all necessary parties were not before the court and denied the material allegations of the petition.[3] She also referenced the prior deed litigation and attached a copy of the court's order in the deed litigation. Grunwald and her sons filed a joint amended response to the petition that restated their original response. They also asserted the affirmative defenses of lack of all necessary parties, lack of jurisdiction, res judicata, judicial estoppel, unclean hands, and waiver and estoppel.

[3]Her sons filed separate responses to the petition.

Grunwald filed a Complaint for Declaratory Judgment requesting that the circuit court declare a certain handwritten document signed by Vella McCall to be an amendment to the McCall Family Revocable Living Trust. The gist of this purported amendment was that Vella McCall wanted to place the farm in the names of Clara Jean McCall Williams and Grunwald as of the time of her death so they could keep the farm operating as a family farm. She also filed a motion to dismiss, later amended to include a motion for summary judgment, asserting that appellants' petition was barred by the purported amendment to the trust instrument, as well as other provisions of the trust instrument. She also argued that res judicata and judicial estoppel were further bases for barring the petition.

At the conclusion of a July 6, 2011 hearing on the motion for summary judgment, the court took the matter under advisement. The court noted that a hearing on Grunwald's claim for declaratory judgment was reserved. On October 13, 2011, the court entered its written order, which after an introductory paragraph stating the date of the hearing and the identity of counsel, reads as follows:

> The court is very familiar with the facts of the case and notes that many of the issues raised by the parties were closely related to the issues tried in case number Carroll County CV 2006-14 WD.
>
> Upon review of all the arguments, pleadings and statements of counsel the court finds that the defendant's motion for summary judgment is granted.
>
> IT IS SO ORDERED

On October 27, 2011, appellants filed a motion requesting the circuit court to make findings of fact and conclusions of law as to the specific basis for the court's ruling. The court failed to rule on the motion and it was deemed denied on November 26, 2011. This appeal

followed.

The finality problem we have with this case stems from the fact that the circuit court specifically reserved resolution of Grunwald's complaint for declaratory judgment. The supreme court recently addressed a similar situation in *Ford Motor Co. v. Washington*, 2012 Ark. 325. There, the court held as follows:

> Under Rule 54(b), an order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *E.g.*, *Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181. Although Rule 54(b) provides a method by which the circuit court may direct entry of a final judgment as to fewer than all of the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final, and we must dismiss the appeal. *Id.* The failure to comply with the provisions of Rule 54(b) affects the subject-matter jurisdiction of this court. *Id.* Thus, this court is obligated to raise the issue on its own. *Id.*

Id. at 2-3. The court dismissed the appeal in *Washington* without prejudice because the failure to comply with Rule 54(b) deprived the court of jurisdiction. *Id.* As was the case in *Washington*, we lack a final judgment in this case due to the failure to dispose of Grunwald's claim for declaratory relief, and the dictates of Rule 54(b) are not satisfied; thus, this court is deprived of jurisdiction. Accordingly, we must dismiss the present appeal without prejudice.

Appeal dismissed.

PITTMAN and GLOVER, JJ., agree.

Kelley Law Firm, by: *Glenn E. Kelley*, for appellants.

Connie S. France, for appellees.