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ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-22-270

IN THE MATTER OF THE ESTATE OF
ADOLPH JOHNSON

STEPHANIE JOHNSON,
INDIVIDUALLY; AND GWENDOLYN
AKINS, AS HER NEXT FRIEND

APPELLANTS

V.

FELECIA PARKER-GREEN

APPELLEE

Opinion Delivered May 24, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
THIRTEENTH DIVISION
[NO. 60PR-20-1967]

HONORABLE W. MICHAEL REIF,
JUDGE

AFFIRMED

CINDY GRACE THYER, Judge

Stephanie Johnson, individually, and Gwendolyn Akins, as her next friend, appeal a Pulaski County Circuit Court order finding Felecia Parker-Green to be an heir of Adolph Johnson, deceased. They claim that Felecia, as Adolph's illegitimate daughter, failed to satisfy the requirements of Arkansas Code Annotated section 28-9-209 (Repl. 2012) that would allow her to inherit from Adolph's estate. We disagree and affirm.

I. *Factual and Procedural History*

Adolph Johnson died intestate on November 23, 2017. At the time of his death, Adolph was survived by Stephanie, Gwendolyn, and Felecia.¹ Stephanie is Adolph's legitimate child and an undisputed heir to his estate. Gwendolyn is Adolph's stepdaughter; she is not biologically related to him, was never formally adopted by him, and inarguably has no valid claim to his estate. Felecia is Adolph's illegitimate daughter and was found by the court to be an heir of Adolph's estate over the objections of Stephanie and Gwendolyn.

At the time of his death, Adolph had an estate valued at less than \$100,000. On January 10, 2018, Gwendolyn and her mother, Lizzie Johnson,² filed an affidavit for collection of small estate by distributees in the Pulaski County Circuit Court (case number 60PR-18-59). The affidavit listed a piece of real property located at 11107 Watson Road in Sherwood, Arkansas, as the only asset of the estate and listed Lizzie and Gwendolyn as the persons entitled to receive the property—Lizzie, as Adolph's ex-wife, and Gwendolyn, as his daughter. None of Adolph's biological children were listed on the form.

On March 22, 2018, Felecia objected to the filing, claiming that Adolph has four living biological children,³ including herself and Stephanie, and that they are entitled to

¹Adolph was also survived by an ex-wife, Lizzie Johnson, and two other illegitimate children, Tony Lavell Nelson and Anna Louise Lewis.

²Lizzie and Adolph Johnson divorced on May 11, 2015.

³The affidavit also named Tony and Anna Louise as potential heirs. However, they were found ineligible to inherit from Adolph's estate and are not parties to this appeal. As a

inherit a portion of his estate. Felecia alleged that Gwendolyn and Lizzie had filed a false affidavit for collection of small estate because Lizzie was not married to Adolph at the time of his death, and Gwendolyn was neither his biological child nor his adopted child.

Several hearings were held before the circuit court over the next few years as the parties attempted to litigate the distribution of Adolph's estate. When the court ordered the property sold with the proceeds divided between Adolph's biological children, Stephanie refused to execute the documents and asserted that, as Adolph's only legitimate child, she is the only heir entitled to inherit. Stephanie argued that Felecia and her other siblings had not established their rights to inherit and that contested issues could not be resolved in an action to collect on a small estate. On October 2, 2020, the circuit court dismissed the action, on Stephanie's motion, after determining that the collection-of-small-estate process could not be used to litigate contested matters and that the Code did not provide for the conversion of small estates into a general administration. The court, however, specifically stated in its order that Felecia's "claim" was being dismissed without prejudice to be brought in the proper format.

A week later, Gwendolyn, as the sister and proposed guardian ad litem of Stephanie, filed a petition for the administration of Adolph's estate and to declare that Stephanie is Adolph's only legitimate child. Gwendolyn also requested that she be appointed Stephanie's guardian and administrator of Adolph's estate. Felecia, acting pro se, moved to dismiss,

result, their claims will not be discussed further except as necessary for an understanding of the issues involved.

claiming that the court's prior orders in the small-estate case had decided the issues. Gwendolyn and Stephanie responded to Felecia's motion, reiterating their claim that Felecia had failed to satisfy the statutory requirements entitling her to inherit.

A hearing on Gwendolyn's petition to become the administrator of Adolph's estate was held on January 7, 2021. At the hearing, Gwendolyn and Stephanie were represented by counsel. Felecia appeared pro se. Counsel continued to assert that Stephanie is Adolph's only legitimate heir because Felecia failed to satisfy any of the conditions or prerequisites of Arkansas Code Annotated section 28-9-209(d). More specifically, he argued that the probate court in case number 60PR-18-59 lacked subject-matter jurisdiction to decide the disputed issues regarding heirship; that the filing of a small estate did not constitute a commencement of an action in probate; that there had to be an existing probate estate in which Felecia could file a claim and there was none at the time she filed her objection; and because the probate estate was opened two years after Adolph's death, Felecia could not legally prevail because her claim had not been filed within 180 days of Adolph's death. The court rejected counsel's arguments and found that Felecia had filed a claim within 180 days when she filed her objection to the affidavit for collection of a small estate and that the written acknowledgement she filed satisfied a required statutory condition. The court then denied Gwendolyn's petition for appointment as the administratrix of Adolph's estate and instead appointed Felecia to that position. The court did not, however, decide the issue of who was entitled to inherit from the estate.

Thereafter, Gwendolyn and Stephanie moved to dismiss Felecia's claim that she was entitled to inherit from the estate. They again asserted that Felecia had failed to satisfy the statutory requirements of section 28-9-209(d). Felecia claimed she had satisfied the requirements by filing a claim in the small-estate case within 180 days of Adolph's death and because Adolph had acknowledged her status as his daughter in a signed, handwritten power of attorney, which she attached to her response.

A hearing to determine heirship was held on January 27, 2022. At that hearing, the parties stipulated that Stephanie is Adolph's legitimate child; thus, the only issue to be decided was whether Felecia was also entitled to inherit. Felecia testified that Adolph was her biological father and that he had acknowledged her in writing in September 2017 after he was hospitalized for a heart attack. Counsel for Stephanie and Gwendolyn again argued that Felecia was not entitled to inherit and that her claims should be dismissed. At the conclusion of the hearing, the court declared Stephanie and Felecia to be the sole legitimate heirs of Adolph Johnson for purposes of his estate and ordered Felecia to execute a correction deed conveying the real property to Felecia and Stephanie. The court's findings were reflected in an order dated February 9, 2022. From this order, Stephanie, individually and through Gwendolyn, appeals.

I. Standard of Review and Applicable Law

Although we review probate proceedings de novo, we do not reverse the circuit court's findings unless they are clearly erroneous. *Noble v. Neal*, 2019 Ark. App. 86, 572 S.W.3d 40. We also review issues of statutory interpretation de novo and are not bound by the circuit

court's interpretation of a statute. *Id.* However, in the absence of a showing that the circuit court erred, its interpretation will be accepted as correct on appeal. *Id.*

The issues in this appeal involve the interpretation of Arkansas Code Annotated section 28-9-209(d), which provides as follows:

(d) An illegitimate child or his or her descendants may inherit real or personal property in the same manner as a legitimate child from the child's mother or her blood kindred. The child may inherit real or personal property from his or her father or from his or her father's blood kindred, provided that at least one (1) of the following conditions is satisfied and an action is commenced or claim asserted against the estate of the father in a court of competent jurisdiction within one hundred eighty (180) days of the death of the father:

(1) A court of competent jurisdiction has established the paternity of the child or has determined the legitimacy of the child pursuant to subsection (a), (b), or (c) of this section;

(2) The man has made a written acknowledgment that he is the father of the child;

(3) The man's name appears with his written consent on the birth certificate as the father of the child;

(4) The mother and father intermarry prior to the birth of the child;

(5) The mother and putative father attempted to marry each other prior to the birth of the child by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or

(6) The putative father is obligated to support the child under a written voluntary promise or by court order.

Ark. Code Ann. § 28-9-209(d).

In construing this statute in *Bell v. McDonald*, 2014 Ark. 75, 432 S.W.3d 18, our supreme court held that the plain language of this statute indicated that both requirements—the filing of the claim and the satisfaction of one of the conditions—must be satisfied within

the 180-day time frame. *Id.* at 7, 432 S.W.3d at 22. Thus, the issue before us on appeal is twofold—whether within 180 days of Adolph’s death (1) an action was commenced in a court of competent jurisdiction and (2) at least one of the conditions of section 28-9-209(d)(1)–(6) was satisfied. Only if both questions are answered in the affirmative can Felecia prevail.

II. Analysis

It is undisputed that Felecia is Adolph’s illegitimate child. As such, she may inherit from her father only if she satisfies the requirements of Arkansas Code Annotated section 28-9-209(d). Felecia claims she satisfied the statutory requirements because she asserted a claim against the estate when she objected to the filing of the affidavit for collection of small estate in March 2018 and because her father acknowledged his paternity in writing prior to his death.

Stephanie and Gwendolyn argue Felecia failed to satisfy either requirement. They first contend that no action was commenced within 180 days of Adolph’s death because the petition for the administration of the estate was not filed until October 9, 2020. However, the plain language of the statute requires that an action be commenced, *or a claim asserted*, within 180 days. Adolph died on November 23, 2017; thus, to be timely, an action had to have been commenced or a claim filed by May 22, 2018. Felecia filed a letter of objection with the circuit court on March 22, 2018, asserting that Adolph was her biological father; thus, she filed a claim against her father’s estate within 180 days of his passing.

Stephanie and Gwendolyn assert, however, that the March 2018 letter was not a valid claim against the estate because it was not filed in a court of competent jurisdiction; that is,

they argue that Felecia’s “claim” was filed in a proceeding for the distribution of a small estate without administration under Arkansas Code Annotated sections 28-41-101 et seq. (Repl. 2012 & Supp. 2021), and that such a proceeding is not a proper forum for resolving a contested dispute. As such, the court in such a proceeding did not have jurisdiction to decide the claim and, accordingly, was not a “court of competent jurisdiction.” We disagree.

A court of competent jurisdiction is a court that has both subject-matter and personal jurisdiction over the claim. *See Taylor v. Hamilton*, 90 Ark. App. 235, 205 S.W.3d 149 (2005); *Hale v. State*, 336 Ark. 345, 985 S.W.2d 303 (1999). Gwendolyn and Stephanie have not argued on appeal that the circuit court lacked personal jurisdiction over the parties; rather, their only apparent challenge is to the circuit court’s subject-matter jurisdiction. The circuit court, however, has subject-matter jurisdiction over the administration, settlement, and distribution of decedents’ estates and the determination of heirship. Ark. Code Ann. § 28-1-104 (Repl. 2012). This includes the distribution of decedents’ estates without administration. *See* Ark. Code Ann. §§ 28-41-101 et seq. For instance, section 28-41-101(a)(1)(D) requires that an affidavit for collection of a small estate be filed with the probate clerk of the circuit court of the county of proper venue for administration. If publication of notice is required, the statute further provides that the required notice specify that the action has been filed in the probate division of the circuit court. Ark. Code Ann. § 28-41-101(b)(2)(B). The small estate provisions further contemplate potential action by the court. Ark. Code Ann. §§ 28-41-103, -104.

Here, in January 2018, Lizzie and Gwendolyn filed the affidavit for the collection of small estate with the Pulaski County Circuit Court, probate division, and the case was assigned docket number 60PR-18-59. It is equally clear from our record that, at the time the case was open and at the time Felecia filed her claim, the circuit court had subject-matter jurisdiction over the estate because, as noted above, section 28-41-101 requires that the small estate be filed with the probate division of the circuit court. The fact that the action had to be dismissed and refiled in the same court to allow for the formal administration of the estate did not deprive the court of its subject-matter jurisdiction over the matter, and appellants have failed to provide us with any convincing authority to the contrary. Because Felecia's claim has always related to the administration and distribution of a decedent's estate and to a determination of heirship, the probate division of the Pulaski County Circuit Court has always had subject-matter jurisdiction over the matter. As such, it was a court of competent jurisdiction in which the claim could be filed.

Next, Stephanie and Gwendolyn argue that Felecia failed to satisfy any of the conditions set forth in Arkansas Code Annotated section 28-9-209(d)(1)-(6) within 180 days. They argue that the handwritten power of attorney submitted by Felecia in support of her claim did not constitute an acknowledgement of paternity and that it was not provided within 180 days of Adolph's death. Again, we disagree.

The statute is clear that only one of six statutory conditions must be met, in addition to the claim-filing requirement, for an illegitimate child to inherit. Here, the handwritten power of attorney at issue in this case fulfills one of those conditions—that the man made a

written acknowledgment that he was the father of the child. Ark. Code Ann. § 28-9-209(d)(2). Here, Felecia introduced a letter signed by Adolph and dated September 4, 2017, granting her power of attorney over his legal issues while he was in the hospital after undergoing surgery for, and recovering from, a heart attack. The letter was executed so that third parties could rely on it, and it clearly identified Felecia as his “daughter.” This is sufficient acknowledgement of paternity for purposes of the statute. See *Noble, supra* (beneficiary-designation form drafted by the decedent identifying Neal as his “son” and executed in anticipation that it would be relied on by his employer deemed sufficient acknowledgement). Moreover, appellant’s counsel did not challenge the validity of the acknowledgement below and, thus, cannot do so on appeal. *Watson v. Highland Pellets, LLC*, 2022 Ark. App. 132, at 7, 643 S.W.3d 267, 271 (“It is a basic rule of appellate procedure that a party cannot change arguments on appeal, and we do not address arguments that were not raised below.”).

We also find that the 180-day time limit was satisfied because the power of attorney acknowledging Adolph’s paternity was executed prior to Adolph’s death. See *Noble, supra* (noting that five of the six statutory conditions can only be satisfied prior to the putative father’s death); *Bell, supra* (holding that an acknowledgement must be accomplished prior to a decedent’s death, thereby allowing an illegitimate child 180 days following a putative father’s death to make a claim based on the decedent’s written acknowledgement).

In short, the court's determination that, within 180 days of Adolph's death, Felecia asserted a claim in a court of competent jurisdiction and satisfied one of the six qualifying conditions of the statute was not clearly erroneous. Therefore, we affirm.

Affirmed.

BARRETT and WOOD, JJ., agree.

Bennie O'Neil, for appellants.

One brief only.