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SUPREME COURT OF ARKANSAS

No. 11-8

HUNTER CRENSHAW
APPELLANT

VS.

THE SPECIAL ADMINISTRATOR OF THE ESTATE OF STEVEN KEN AYERS, DECEASED
APPELLEE

Opinion Delivered May 19, 2011

APPEAL FROM THE WHITE COUNTY CIRCUIT COURT,
NO. CV10-457-1,
HON. THOMAS MORGAN HUGHES, III, JUDGE

AFFIRMED.

JIM HANNAH, Chief Justice

Hunter Crenshaw appeals a September 14, 2010 order entering summary judgment that dismissed with prejudice his lawsuit against Steven Ayers for failure to commence the lawsuit within the applicable statute of limitations. Crenshaw asserts that the circuit court erred in dismissing his lawsuit because service of his complaint on a special administrator appointed by the probate court subsequent to filing the original complaint related back to the commencement of the original complaint and brought service of the complaint within the applicable statute of limitations. He also asserts that his complaint was timely under the Arkansas nonclaim statute, Arkansas Code Annotated section 28-50-101 (Supp. 2009). We affirm the decision of the circuit court. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(5).

On May 21, 2007, Crenshaw and Ayers were involved in an automobile accident. Ayers subsequently died on May 9, 2009. Crenshaw filed a complaint on May 14, 2010, naming the deceased Ayers as the sole defendant. A summons was issued naming "Steven Ken Ayers" on this same date but was never returned. On June 24, 2010, Crenshaw filed an amended complaint again naming Ayers as the sole defendant and adding a claim for punitive damages. An answer and motion to dismiss were filed on June 25, 2010, stating, "Comes Steven Ken Ayers ('defendant'), by and through his attorneys, and for his answer and motion to dismiss," and asserting a lack of jurisdiction and defective service of process. On August 18, 2010, Crenshaw filed a motion for extension of time to serve the complaint asserting that he had learned of Ayers's death, that he had determined that no probate estate had been opened, and that he needed additional time to obtain appointment of a special administrator so that service could be effected. Thereafter, on September 2, 2010, an amended answer and a motion to dismiss were filed on behalf of Ayers, again naming him as the defendant but adding "who predeceased the filing of this action." The answer asserted the defense of limitations. On this same date, a motion for summary judgment on behalf of Ayers was filed, again noting that Ayers had predeceased the filing of the action. The motion for summary judgment asserted that the original complaint was a nullity, that because the original complaint was a nullity, there could be no substitution of parties, and that, therefore, the statute of limitations extinguished the claim.

On September 3, 2010, Crenshaw filed a complaint naming a special administrator as defendant. The special administrator was served on September 7, 2010, four days before the

120 days under Rule 4 expired. Crenshaw filed a response to the motion to dismiss and motion for summary judgment arguing that he was entitled to substitute the administrator for the deceased Ayers under Arkansas Rule of Civil Procedure 25, or, in the alternative, that the complaint filed against the administrator related back to the original complaint under Arkansas Rule of Civil Procedure 15. He additionally argued that he was entitled to proceed under the Arkansas nonclaim statute. The circuit court denied the motion for extension of time to serve the complaint and granted the motion for summary judgment.

A trial court may grant summary judgment when it is apparent that no genuine issues of material fact exist requiring litigation and that the moving party is entitled to judgment as a matter of law. *Repking v. Lokey*, 2010 Ark. 356, at 4, 377 S.W.3d 211, 216. Once the moving party establishes a prima facie entitlement to summary judgment, the burden of proof shifts to the opposing party, and the opposing party must demonstrate the existence of a material issue of fact. *Id.*, 377 S.W.3d at 216. Upon reviewing the undisputed facts, the trial court should deny summary judgment if, under the evidence, reasonable minds might reach different conclusions from the same undisputed facts. *Id.*, 377 S.W.3d at 216. On appeal, this court determines whether the evidentiary items presented by the moving party leave a material question of fact unanswered. *Id.*, 377 S.W.3d at 216. The evidence is viewed in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* at 4–5, 377 S.W.3d at 216. Further, this review is not limited to the pleadings but also includes the affidavits and other documents filed by the parties. *Id.* at 5, 377 S.W.3d at 216.

Crenshaw raises six issues on appeal. He argues (1) that Ayers could not be a proper party below and could not file an answer and responsive pleadings because he was dead, (2) that service was effective because a complaint was served on the special administrator within 120 days of filing the original complaint, (3) that naming Ayers was a misnomer and he was entitled to substitute the special administrator under Rule 25 because Ayers was a deceased party, (4) that naming the deceased Ayers as a party was a misnomer entitling him to substitute the special administrator as the correct party, (5) that his complaint naming the special administrator relates back to his original complaint under Arkansas Rule of Civil Procedure 15(c), and (6) that the lawsuit was timely under the nonclaim statute.

Crenshaw's assertion that the deceased Ayers was not a proper party below is raised for the first time on appeal. On appeal, our jurisdiction is limited to reviewing those issues upon which there is a decision reflected in an order or a decree from a lower court. *See Gwin v. Daniels*, 357 Ark. 623, 626, 184 S.W.3d 28, 30 (2004). In the present case, there is no order or decree deciding this issue, and on that basis, we must decline to consider it.

We next consider the viability of Crenshaw's original complaint, upon which, with the exception of the nonclaim issue, all of his remaining arguments rely. Crenshaw asserts that naming the deceased Steven Ayers as a party was a misnomer. A misnomer is a mistake in naming a party. *Nucor Corp. v. Kilman*, 358 Ark. 107, 132, 186 S.W.3d 720, 736 (2004) (quoting *Black's Law Dictionary* 1015 (7th ed. 1999)). Where the mistake in naming the party is so substantial or material as to indicate a different entity, it is fatal. *See Shotzman v. Berumen*, 363 Ark. 215, 225, 213 S.W.3d 13, 17–18 (2005). Crenshaw meant to name Steven Ayers

and did so. There is no evidence to show that in filing the original complaint, Crenshaw intended to name the estate or a representative of Ayers's estate. Ayers and the estate of Ayers are separate and distinct entities. Arkansas Rule of Civil Procedure 4(b) requires that the summons contain the names of the parties and be directed to the defendant. This court has consistently held that compliance with Rule 4(b) "must be exact." *Shotzman*, 363 Ark. at 227, 213 S.W.3d at 19. Without valid service of process, the circuit court never acquires jurisdiction. *Id.*, 213 S.W.3d at 19.

In *Storey v. Smith*, 224 Ark. 163, 272 S.W.2d 74 (1954) this court considered a summons issued in the name of a nonexistent defendant and stated that, "[w]e have no Arkansas case bearing upon the effect of a summons issued for service upon a nonexistent defendant." *Storey*, 224 Ark. at 165, 272 S.W.2d at 76. The court concluded that "no legal proceeding actually existed; nor can it exist until the identity of the defendant is known or comes into being." *Storey*, 224 Ark. at 167, 272 S.W.2d at 77. The court found that the problem was "a jurisdictional defect quite beyond the court's power to correct." *Id.*, 272 S.W.2d at 77.[1] In this case, Crenshaw did not make a mistake in naming Ayers as the

[1]Crenshaw relies on several cases from other states in support of his argument that his complaint naming the special administrator should relate back or permit substitution of parties; however, while these cases may mention the issue of whether the trial court acquires jurisdiction when the wrong party is named in the original complaint, the conclusions reached permitting relation back and substitution are based on whether the requirements of the rules of civil procedure are met and upon avoiding the defeat of potentially meritorious claims on technicalities. *See Hamilton v. Blackman*, 915 P.2d 1210 (Alaska 1996); *Baker v. McKnight*, 447 N.E.2d 104 (Ohio 1983); *Eberbach v. McNabney*, 413 N.E.2d 958 (Ind. Ct. App. 1980); *Loudenslager v. Teeple*, 466 F.2d 249 (3d Cir. 1972). As discussed above, there must be jurisdiction before there can be a complaint that is subject to amendment, relation back, or substitution of parties.

defendant. He intended to name Ayers and did so unaware that Ayers was deceased. In short, there is no misnomer in the present case, and no legal proceeding was commenced by filing the complaint against the deceased Ayers.

The original complaint was void ab initio and a nullity, and as such, it was not subject to amendment, relation back under Rule 15(c), or substitution of parties under Rule 25. A complaint naming a deceased person as the defendant constitutes a defect that fails to invoke the jurisdiction of the court because there must be an entity in being at the time the complaint is filed. *See Storey*, 224 Ark. at 167, 272 S.W.2d at 77. A complaint must be valid to constitute an amendable pleading. *Davenport v. Lee*, 348 Ark. 148, 164, 72 S.W.3d 85, 94 (2002). Before Rule 15(c) can apply, there must be a valid pleading to relate back to. *St. Paul Mercury Ins. Co. v. Circuit Court of Craighead County*, 348 Ark. 197, 204, 73 S.W.3d 584, 588 (2002). Rule 25 provides for substitution when "a party dies," which means that the person must be a party at the time of death. *See* Ark. R. Civ. P. 25(a). The September 3, 2010 complaint naming the special administrator began an entirely new lawsuit and, therefore, was subject to the statute of limitations, which Crenshaw acknowledges had already run on May 21, 2010.

Nonetheless, Crenshaw argues that he was entitled to bring suit under the Arkansas nonclaim statute, Arkansas Code Annotated section 28-50-101. By way of authority, he provides this court with a quote from the nonclaim statute and a reference to *Dodson v. Charter Behavioral Health Systems of Northwest Arkansas*, 335 Ark. 96, 983 S.W.2d 98 (1998). This court in *Dodson* discussed the nonclaim statute with respect to the statutory period within

which claims against the estate must be presented, noting that the purpose of the statutory period was "to give a clear cut off date for such claims and to enable the personal representative to close the estate if feasible." *Dodson*, 335 Ark. at 110, 983 S.W.2d at 106. Crenshaw argues on appeal that his claim against the estate "would not be barred" by the nonclaim statute until six months after the first publication of notice in a newspaper, and that he is not aware of any notice being given. Crenshaw offers no authority or convincing argument supporting his position, and his argument on this issue is not developed. This court has often stated that it will not develop an appellant's issue or argument on appeal. *See Repking*, 2010 Ark. 356, at 13, 377 S.W.3d at 221. We will not do a party's research and will affirm where the argument is not convincing and lacks legal authority. *Holt v. Wagner*, 344 Ark. 691, 697, 43 S.W.3d 128, 132 (2001).

Affirmed.