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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190961

Randolph County Commission

v.

Jeffery K. Landrum

2190971

Jim Barber et al.

v.

Jeffery K. Landrum

Appeals from Randolph Circuit Court
(CV-17-900045)

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EDWARDS, Judge.

In appeal number 2190961, the Randolph County Commission ("the Commission") appeals from a judgment entered by the Randolph Circuit Court ("the trial court") in favor of Jeffery K. Landrum on his claim for the common-law dedication of a road, i.e., seeking a judgment declaring that a certain unimproved road is a public, county road. In appeal number 2190971, Jim Barber; Jimmy Goss; Tommy Owens; Kevin Hyatt; Tallapoosa Timberlands, LLC; Tallapoosa River Hunting Club ("the hunting club"); and Resource Management Service, LLC, appeal from that same judgment.¹ We reverse and remand.

¹The estate of C.C. Twilley ("the Twilley estate") also purported to appeal. However, the Twilley estate was not named as a party in the case, and it is unclear from the record whether the Twilley estate was ever even the subject of a probate proceeding. See Ala. Code 1975, § 43-8-1(8) (defining "estate" as including "the property of the decedent whose affairs are subject to ... chapter [8 of Title 43, Ala. Code 1975,] as originally constituted and as it exists from time to time during administration"). Because the Twilley estate was not a party in the case and the judgment entered by the trial court did not purport to adjudicate the interests of the Twilley estate, the Twilley estate could not appeal from the underlying judgment.

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In 2016, Landrum purchased 34 acres of real property near the Tallapoosa River end of an unimproved road ("Road 968") that purportedly begins at Randolph County Road 5 and terminates at some point near the Tallapoosa River in southwest Randolph County. Landrum's property does not abut the end of Road 968, but use of that road is apparently necessary to access his property. On July 12, 2017, Landrum filed a complaint in the trial court against Barber, Owens, and Hyatt, who he alleged were members of the hunting club, which purportedly leased or owned part of the land on which Road 968 is located. Landrum sought a declaration that Road 968 is a public, county road and an injunction requiring the removal of a gate that had been placed across the road at its intersection with County Road 5, allegedly after he had purchased his property.

On September 5, 2017, Barber filed a motion requesting that the trial court dismiss the complaint or, in the alternative, require Landrum to add certain persons as parties to his action. See Rule 19, Ala. R. Civ. P. Barber alleged that he and Goss own part of the land on either side of Road 968 and that they lease their land to the hunting club. Thus, he

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contended, Goss and the members of the hunting club must be added as parties to Landrum's action.² Barber further alleged, however, that most of the land on which Road 968 is located is owned by "the Twilley family" and is, in turn, leased by Tallapoosa Timberlands, which has retained Resource Management to conduct timber-harvesting operations on the property and to manage that property. Barber also alleged that Tallapoosa Timberlands has a lease with the hunting club regarding the property Tallapoosa Timberlands leases from "the Twilley family." He contended that those "persons, firms or corporations" and the Commission should also be added as parties to Landrum's action.

On September 12, 2017, Goss, Tallapoosa Timberlands, the hunting club, Resource Management, and "the Twilley Family" filed a motion to intervene in Landrum's action, see Rule 24(a), Ala. R. Civ. P., and included a counterclaim requesting that the trial court "enter an order

²The hunting club apparently is an unincorporated association having at least 25 members. Assuming, without deciding, that the hunting club is a nonprofit association, Ala. Code 1975, § 10A-17-1.08(a), states that "[a] nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding"

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declaring that [Road 968] is a private roadway owned by the Twilley Family," which in turn had entered into leases relating to their property and Road 968. Specifically, the counterclaim alleged that

"the Twilley Family is represented by Don Rush,^[3] a Twilley heir, who appears on behalf of all Twilley family heirs. Mr. Rush and the Twilley Family contend that the roadway running through the Twilley lands at issue in this case is not a public roadway, has never been a public roadway and is a roadway created by the original Twilley landowner (C.C. Twilley) for access to his property. Mr. C.C. Twilley constructed the roadway in question to access his property on which timber has been harvested and removed for decades. The Twilley Family claims the road has never been opened to the public and if anyone has been using any of the roadway it would have been without the permission of the Twilley Family who owned the property on all sides of the roadway in question. Mr. C.C. Twilley also used the road to access his farm land and cattle operation."

The trial court entered an order granting the motion to intervene and allowing the filing of the counterclaim.

On May 4, 2018, Landrum filed an amended complaint against Barber, Goss, Owens, Hyatt, Tallapoosa Timberlands, the hunting club, "the Twilley Heirs," and Resource Management (referred to collectively as

³There is no indication that Don Rush is an attorney, and he did not sign the motion to intervene and counterclaim.

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"the private-party defendants") and the Commission. Landrum's amended complaint made no reference to "the Twilley Family." Landrum alleged that "the Twilley Heirs" owned property along Road 968, that they had leased the property to Tallapoosa Timberlands, and that, in turn, Tallapoosa Timberlands had leased the property to the hunting club. He also alleged that those heirs were "represented by heir Don Rush." Landrum alleged that Resource Management was "responsible for the harvesting of timber on the lands owned by" "the Twilley Heirs." The amended complaint sought an order declaring Road 968 to be a public, county road.⁴

The Commission and most of the private-party defendants,⁵ including the "Heirs of C.C. Twilley," filed answers to the amended complaint denying the allegations thereof, including the allegation that

⁴Landrum's amended complaint also alleged a claim for damages for the purported obstruction of Road 968 by the Commission and the private-party defendants, but, at trial, the trial court granted a judgment as a matter of law against Landrum as to that claim.

⁵Owens and Hyatt did not file an answer to the amended complaint. Also, the amended complaint describes Goss as "Jimmy Gross." Because Goss's name appears as "Goss" on a deed to him and Barber and in other places in the record, we refer to him as Goss.

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Don Rush represented those heirs, and asserting various affirmative defenses to Landrum's claims.

The trial court held ore tenus proceedings in September 2019, and, on April 7, 2020, it entered an order declaring that Road 968 is a public, county road and enjoining the Commission and the private-party defendants "from obstructing County Road 968 by maintaining a gate across said road, or otherwise hindering public travel on said road or the maintenance thereof, in any manner whatsoever, at any point from County Road 5 to the Tallapoosa River." Although a factual dispute was presented at trial regarding the exact location of Road 968 (different roads or portions of roads were discussed in relation to various maps), the April 2020 order failed to determine that issue. See Rule 54, Ala. R. Civ. P; see also, e.g., Littleton v. Wells, 280 So. 3d 1080, 1086 (Ala. Civ. App. 2019) (discussing the requirement that a judgment actually establish the disputed boundary, even if a subsequent survey may be necessary, in order to be a final judgment).

On May 7, 2020, the Commission filed a purported postjudgment motion, and, on May 18, 2020, the private-party defendants filed a

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purported postjudgment motion. In addition to arguing that the trial court had erred regarding its determination that Road 968 is a public, county road, both purported postjudgment motions also argued that the trial court needed to address the location of Road 968 based on the evidence presented at trial. Landrum filed a response opposing the purported postjudgment motions; however, he made no reference regarding whether the April 2020 order had adjudicated the issue of the location of Road 968.

On June 29, 2020, the trial court held a hearing on the purported postjudgment motions, and, on August 11, 2020, it entered an order denying those motions.⁶ The trial court stated, in pertinent part,

"that the road in question was subject to common law dedication. The county road 968 sign has been on along the road for many years. The owners never removed the sign or asked for its removal. It was proven by clear and convincing evidence that the owner unequivocally approved the dedication and the county accepted the dedication by placing and replacing the county road 968 signs and a stop sign on said road."

⁶If the April 2020 order had been a final judgment, the Commission's purported postjudgment motion would have been denied by operation of law on August 5, 2020. See Rule 59.1, Ala. R. Civ. P.

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The August 2020 order further stated that,

"[i]n an effort to clarify the intended boundaries of the roadway at issue, County Road 968, the ... April ... 2020 [order], is amended to reflect the intent of the Court that County Road 968 begins at the intersection of County Road 5 and continues to an orange marking as depicted on [Landrum's exhibit] #3 map. The same road is depicted on [the Commission's exhibit] #26A. Said road is depicted in green and highlighted in orange. And also shown on [the private-party] defendant's [exhibit] #1 to a red mark."

We note that the location of the termination point of Road 968 as depicted on Landrum's exhibit #3 and the Commission's exhibit #26A appear to be consistent with one another, but not consistent with the "red mark" on the private-party defendant's exhibit #1. Nevertheless, the August 2020 order purported to resolve the issue that remained pending after the entry of the April 2020 order.⁷

⁷As the purported postjudgment motions reflect, the parties appear to have been confused regarding whether the April 2020 order was a final judgment. The parties also attempted to take additional action to ensure that the April 2020 order, as amended by the August 2020 order, would be considered as a final judgment for purposes of any appeal. On September 8, 2020, the parties filed a "Joint Motion for Rule 60(b)(6) Relief," see Rule 60(b)(6), Ala. R. Civ. P., alleging that the August 2020 order had not been entered before the denial by operation of law of the Commission's postjudgment motion, see note 6, supra, and stating that "all parties agree that the Court has to grant the parties' relief from the

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On September 14, 2020, the private-party defendants -- except for "the Twilley Heirs" -- timely filed a notice of appeal to the supreme court. The following day, the Commission timely filed a notice of appeal to the supreme court. The supreme court transferred the appeals to this court, pursuant to Ala. Code 1975, § 12-2-7(6), and we consolidated the appeals ex mero motu.

The private-party defendants, other than the "Twilley Heirs," and the Commission make several arguments challenging the trial court's

April ... 2020 [order] so that the location of the road can be entered by the Court and the parties will know with clarity and an Appellate Court would know with clarity where the location of the road in question is located." Attached to the joint motion was a proposed order granting that motion and including a description for Road 968 that was identical to the description in the August 2020 order. The proposed order further stated that the April 2020 order "did not designate the location of [Road 968]. The road ... would have to be identified with clarity for the [April 2020] order ... to have any meaning to the parties with respect to finalizing the issues before the Court as of the time of [that] ... order." See Littleton, supra. The trial court entered the proposed order on September 8, 2020.

Because the August 2020 order had already adjudicated the location issue in the manner that the parties proposed in their joint motion filed pursuant to Rule 60(b)(6), that motion reflected no justiciable controversy. See, e.g., Hasting v. Roberts, 230 So. 3d 391, 396 (Ala. 2017) (discussing the principle that a court has no jurisdiction in the absence of a justiciable controversy).

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determination that Road 968 is a public, county road. We pretermitted any discussion of those arguments, however, because the April 2020 order, as amended by the August 2020 order, must be reversed and this case remanded for the trial court to comply with Rule 19, Ala. R. Civ. P., and for such further proceedings as might be necessary (1) to make all persons who own an interest in the property formerly owned by C.C. Twilley and on which Road 968 is located parties to Landrum's action, whether those persons are heirs of C.C. Twilley or the successors in interest to any such heir, and (2) to enter a judgment adjudicating the interests of any such parties, along with those of the Commission and the private-party defendants, with the exception of the non-entity referred to as "the Twilley Heirs." See note 8, infra.

Pamela D. Taylor, the Randolph County Revenue Commissioner, testified at trial regarding a document from her office that describes the "[a]creage assessed for parcels owned by the C.C. Twilley Estate from 1988 thru [sic] 2019," including the property on which Road 968 is located. It is unclear from the record exactly when C.C. Twilley died, whether his estate was probated, see note 1, supra, who may have had the property at

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issue assessed in the name of "the C.C. Twilley Estate," or whether C.C. Twilley died intestate. Nevertheless, based on the parties' references to C.C. Twilley having heirs in relation to the property at issue, we assume, without deciding, that C.C. Twilley died intestate. See Ala. Code 1975, § 43-8-1(13) (defining "heirs" as "[t]hose persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent").

Section 43-2-830(a), Ala. Code 1975, provides that,

"[u]pon the death of a person, decedent's real property devolves to the persons to whom it is devised by decedent's last will ..., or in the absence of testamentary disposition, to decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates."

See also Commentary to Ala. Code 1975, § 43-2-837 (A personal representative may disrupt an heir's possession of real property if necessary for purposes of administration of the decedent's estate, but "[s]ection 43-2-830 provides for the devolution of title to property on death. Historically, title to real property devolves on death to the heirs or devisees of the decedent Section 43-2-830 codifies the historical effect.").

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C.C. Twilley's heirs consisted of individual persons, namely, his surviving spouse, if any, see Ala. Code 1975, § 43-8-41, and those persons described in Ala. Code 1975, § 43-8-42, to the extent such spouse, if any, and such persons survived C.C. Twilley by five days, see Ala. Code 1975, § 43-8-43. Based on our precedents and Rule 19, each heir of C.C. Twilley who inherited an interest in the property on which Road 968 is located, or such heir's respective successor in interest to the extent an heir may have subsequently died or transferred his or her interest in the property at issue, must be made a party to Landrum's action, if feasible.⁸ As this court stated in Allbritton v. Dawkins, 19 So. 3d 241, 243-44 (Ala. Civ. App. 2009):

"Our supreme court has stated:

" 'Rule 19, Ala. R. Civ. P., provides for joinder of persons needed for just adjudication. Its purposes include the promotion of judicial efficiency and the final determination of litigation by including all parties directly interested in the

⁸The parties apparently assumed that "the Twilley Heirs" constituted a legal entity whose interest might be represented by an agent. However, the legal persons who collectively make up a decedent's heirs are not a legal entity.

controversy. Where the parties before the court adequately represent the absent parties' interests and the absent parties could easily intervene should they fear inadequate representation, no reason exists why the trial court could not grant meaningful relief to the parties before the court. Also, joinder of absent parties is not absolutely necessary where determination of the controversy will not result in a loss to the absent parties' interest or where the action does not seek a judgment against them. ...

" [The supreme court] has also held, however, that in cases where the final judgment will affect ownership of an interest in real property, all parties claiming an interest in the real property must be joined.'

"Byrd Cos. v. Smith, 591 So. 2d 844, 846 (Ala.1991) (citations omitted). See also Johnston v. White-Spunner, 342 So. 2d 754 (Ala.1977) (when a trial court is asked to determine property rights of property owners not before the court, the absent property owners are indispensable parties and any judgment entered in the absence of those parties is void).

"In this case, the Allbrittons requested that the trial court determine whether Allbritton Lane is a public or private road or, alternatively, to determine whether easements existed in favor of the property on which the Allbrittons live. Because any determination of those issues could impact the ownership interests in real property of Carl Allbritton, Mark's mother, and any other person owning an interest in property over which Allbritton Lane runs, those absent property owners are indispensable parties to this action. Byrd Cos., supra; and Johnston, supra."

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Likewise, in Darby v. Presley, [Ms. 2190403, Nov. 20, 2020] ___ So. 3d ___, ___ (Ala. Civ. App. 2020), we stated:

"[T]he record establishes there are heirs of Martha Jane [Presley] owning undivided interests in the property that were not made parties to this action. Given the nature of the claims at issue, which sought to decide the ownership of the property, all the tenants in common are necessary parties to be joined in this action if feasible. The record indicates that the trial court conducted no Rule 19 necessary-party/indispensable-party analysis in this case. Accordingly, the judgment of the trial court is reversed, and the case is remanded with instructions for the trial court to determine whether the absent tenants in common can be identified and feasibly joined in the action; to determine, if that identification and joinder cannot take place, whether the action can properly proceed in the absence of the absent tenants in common; and to conduct other proceedings consistent with this opinion."

See also Hall v. Reynolds, 60 So. 3d 927, 931 (Ala. Civ. App. 2010) (reversing judgment and remanding case for a hearing "[b]ecause the record indicates that [Johnnie] Hall[, Sr.] and the other heirs of David Hall share an ownership interest in the Hall property, [and, thus,] the other heirs of David Hall should have been joined in the action if it was feasible").

Based on the foregoing, we reverse the April 2020 order, as amended by the August 2020 order, and remand the case for the trial court to

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conduct further proceedings consistent with this opinion, Rule 19, and as otherwise are necessary to the entry of a final judgment in this case.

2190961 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2190971 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Hanson, and Fridy, JJ., concur.