

Rel: May 20, 2022

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200384

**John B. Rhodes, C.P.A., as successor to Moshe Budmor as
trustee of the Annis Fromm Royalty Trust**

v.

Rainer Funk

**Appeal from Montgomery Circuit Court
(CV-86-416)**

MITCHELL, Justice.

John B. Rhodes resurrected a decades-old case when he filed a motion to enforce a settlement agreement that the Montgomery Circuit Court had originally approved in 1987. The circuit court entered a judgment striking Rhodes's motion for lack of subject-matter jurisdiction. After the circuit court issued its ruling, Rhodes filed a postjudgment motion arguing that the circuit court did, in fact, have subject-matter jurisdiction. The circuit court denied Rhodes's postjudgment motion without holding a hearing.

Rhodes now appeals, asserting that the circuit court erred in determining that it lacked subject-matter jurisdiction and that the court violated Rule 59(g), Ala. R. Civ. P., by not giving him an opportunity to be heard on his postjudgment motion. We agree with Rhodes that the circuit court likely had subject-matter jurisdiction over at least some of his claims. Because Rhodes's postjudgment motion had probable merit, the circuit court's failure to hold the hearing required by Rule 59(g) was not harmless. The order denying Rhodes's postjudgment motion is therefore reversed, and the cause is remanded for the circuit court to hold a hearing to determine the extent of its jurisdiction.

Facts and Procedural History

Erich Fromm was a prolific author who published numerous books on psychology and philosophy. While Erich and his wife, Annis Fromm, were living in Switzerland, the couple executed a will ("the Swiss will") in which they each appointed the other sole heir and executor of his or her estate. In the event both of them died, the Fromms appointed Moshe Budmor to be their executor and Rainer Funk, a former student of Erich's, to be their estate's "literary executor."

After Erich passed away, Annis moved to Montgomery, where she executed a new will ("the Alabama will"), which purportedly revoked the Swiss will and established a trust ("the trust") to handle all rights, title, and interest in Erich's literary works. Similar to the Swiss will, the Alabama will named Budmor trustee and Funk "literary executor." But the Alabama will granted Funk less compensation and more limited powers than the Swiss will.

Annis died in 1985. Shortly after her death, Funk sued Budmor in the Montgomery Circuit Court, arguing that the Swiss will could not be revoked and that Funk (as literary executor) was entitled to all powers and compensation afforded under the Swiss will. Budmor and Funk

eventually reached a settlement, which was approved by the circuit court in 1987. The settlement agreement provided that the circuit court would "retain exclusive jurisdiction of this action and of the parties to this Agreement for purposes of the interpretation and enforcement of this Agreement." The circuit court entered a parallel order confirming that "[t]he Court shall retain exclusive jurisdiction of this action and of the parties as provided for in the Settlement Agreement." The settlement agreement allowed Budmor and Funk to continue serving as trustee and literary executor, respectively, and the two men continued in those roles for nearly three decades. Then, in 2015, Budmor passed away and the remaining trust beneficiaries appointed Rhodes as his replacement.

Soon after Rhodes took over as trustee, he came to believe that Funk had been violating several provisions of the settlement agreement for many years. Invoking the circuit court's residual jurisdiction, Rhodes filed a motion to enforce the settlement agreement in which he claimed, among other things, that Funk had taken excess compensation, had improperly claimed personal ownership over trust property, and had failed to comply with several other provisions of the agreement relating to the rights and obligations of the literary executor.

Funk responded by arguing that the circuit court lacked subject-matter jurisdiction over Rhodes's motion because, he contended, Rhodes's allegations and requested relief were so broad that they fell outside the residual jurisdiction of the circuit court to interpret and enforce the settlement agreement. The circuit court, apparently agreeing with Funk, struck Rhodes's motion in its entirety for "lack of subject matter jurisdiction" in an otherwise unexplained order. Rhodes filed a timely motion under Rule 59(e), Ala. R. Civ. P., asking the circuit court to alter, amend, or vacate its judgment,¹ and he requested a hearing on that motion. Nevertheless, the circuit court summarily denied the postjudgment motion without giving Rhodes an opportunity to be heard. Rhodes appealed to this Court.

¹The parties correctly assume that the circuit court's order striking Rhodes's motion constituted a final judgment for purposes of Rule 59(e) and this Court's appellate jurisdiction. While orders granting motions to strike do not always qualify as final judgments, the circuit court's order in this case does because it "conclusively" denied all of Rhodes's claims, leaving no issues to be determined and nothing left for further proceedings to accomplish. Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995) (describing the circumstances under which an order constitutes a final judgment for purposes of Rule 54(b), Ala. R. Civ. P.); see also Ex parte Troutman Sanders, LLP, 866 So. 2d 547, 549-50 (Ala. 2003) (noting that a "judgment" for purposes of Rule 59(e) refers to a final judgment "from which an appeal lies" under Rule 54).

Analysis

" 'Rule 59(g), Ala. R. Civ. P., provides that motions filed pursuant to Rule 59(e) "shall not be ruled upon until the parties have had opportunity to be heard thereon." In other words, "when a hearing is requested pursuant to Rule 59(g), the trial court errs in not granting a hearing." "' Honea v. Raymond James Fin. Servs., Inc., 240 So. 3d 550, 563 (Ala. 2017) (citations omitted). Such an error can be harmless, however, if the appellate court determines that the motion had "no probable merit." Id. at 564; see also Rule 45, Ala. R. App. P.

Funk concedes that the circuit court erred in denying Rhodes's postjudgment motion without a hearing, but he argues that this error was harmless because, he says, Rhodes's motion lacked probable merit. According to Funk, Rhodes's motion to enforce the settlement agreement did not validly invoke the circuit court's residual jurisdiction because Rhodes "was seeking to prosecute new claims against [Funk], which went well beyond the residual jurisdiction the trial court could have retained to interpret and enforce its judgments." See State Pers. Bd. v. Akers, 797 So. 2d 422, 424 (Ala. 2000) ("A trial court has inherent authority to interpret, clarify, and enforce its own final judgments."). And, Funk

argues, Rhodes's postjudgment motion did not present any valid reasons for doubting the circuit court's conclusion that it lacked jurisdiction.

The record does not support Funk's contention that the circuit court's error was harmless. Both Rhodes's motion to enforce and his postjudgment motion expressly alleged violations of the settlement agreement and sought relief that is at least plausibly consistent with the circuit court's residual jurisdiction over that agreement. For example, Rhodes alleged that "Funk improperly obtain[ed] 15% of the gross royalty income" from Erich's literary works even though "[t]he Settlement Agreement very specifically defines [Funk's] maximum compensation" as "15% of net royalty income." Rhodes also alleged that Funk directed third parties to issue payments to himself personally, instead of to the trust, thereby "violat[ing] the terms of the Settlement Agreement expressly requiring that royalties ... be remitted exclusively to the trustee," and that Funk "entered into certain contracts directly with publishers ... in violation of the provision of the Settlement Agreement prohibiting [Funk] from taking action that is binding upon the [trust] except upon the prior written approval of the trustee." Rhodes went on to request restitution,

punitive damages, and various forms of declaratory and injunctive relief to remedy those alleged violations.

In short, Rhodes's motion to enforce clearly alleged that Funk had violated the settlement agreement and requested relief that appears, at least in part, tailored to remedying those alleged violations. Rhodes's postjudgment motion reiterated those claims and plausibly argued that the circuit court had erred when it struck Rhodes's motion to enforce for lack of subject-matter jurisdiction. It is therefore, at a minimum, "probable" that Rhodes's postjudgment motion had merit.

Funk resists this conclusion by arguing that Rhodes's motion to enforce raised only general "breach of fiduciary duty claims" and did not allege "breaches of discrete paragraphs of the Settlement Agreement." That contention is incorrect. As the examples above illustrate, Rhodes's motion to enforce explicitly tied Funk's alleged misconduct to violations of discrete portions of the settlement agreement -- a document that Rhodes quoted extensively both in his original motion to enforce and in his postjudgment motion. And though Rhodes's motions occasionally referenced Funk's "fiduciary" obligations -- for example, Rhodes's motion to enforce included the caption "Breaches of Fiduciary Duties under the

Settlement Agreement" (emphasis added) -- Rhodes may have used that language simply to highlight the fact that Funk's obligations under the settlement agreement are fiduciary in nature. Rhodes's use of the term "fiduciary duties" does not necessarily indicate that he sought to raise standalone tort claims.

Funk next argues that some of Rhodes's other allegations (such as Rhodes's assertion that Funk cannot properly claim ownership over certain of Erich's writings) and requests for relief (such as Rhodes's demand that Funk provide a complete inventory and itemization of Erich's writings in his possession) go beyond the scope of the settlement agreement. We need not determine the probable merit of all of Rhodes's allegations and requests for relief, however, because the examples given above are enough to demonstrate that Rhodes's postjudgment motion had at least some probable merit. See, e.g., Carden v. Carden, 64 So. 3d 1116, 1120 (Ala. Civ. App. 2010) (noting that denial of postjudgment motion is reversible error if there is probable merit in even "one of the arguments raised in the postjudgment motion" (emphasis added)). Even assuming, as Funk contends, that some of Rhodes's claims go beyond merely seeking interpretation and enforcement of the settlement agreement, the proper

course of action would be for the circuit court to analyze each claim individually, weeding out those that are impermissible while allowing Rhodes to continue with those that do involve interpretation or enforcement.

Finally, Funk argues that several "alternative" grounds support affirmance, including "lack of personal jurisdiction, improper venue, acquiescence, laches, [and the rule of] repose."² We do not reach these alternative arguments, because each one hinges on how the circuit court ultimately resolves Rhodes's postjudgment motion. Funk concedes that personal jurisdiction and venue would be proper in the circuit court for any claims that legitimately invoke that court's residual jurisdiction -- meaning that if the circuit court grants Rhodes's postjudgment motion, then that ruling would foreclose Funk's arguments regarding personal jurisdiction and venue. And neither we nor the circuit court can reach the affirmative defenses of acquiescence, laches, or the rule of repose

²The other reasons for affirmance that Funk mentions are "insufficient process" and "insufficient service of process." But Funk does not spell out any arguments or cite any authority in support of these theories and therefore has failed to "adequately present[]" them for review. Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994); see Rule 28(a)(10), Ala. R. App. P.

until after determining that the circuit court has subject-matter jurisdiction. See Loachapoka Water Auth., Inc. v. Water Works Bd. of Auburn, 74 So. 3d 419, 422 (Ala. 2011) ("In the absence of subject-matter jurisdiction, this Court has no power to consider the merits"). The circuit court may consider these arguments in the first instance, if appropriate, after it has given Rhodes an opportunity to be heard on his postjudgment motion and has determined the extent of its subject-matter jurisdiction. See Jefferson Cnty. Comm'n v. Edwards, 32 So. 3d 572, 583 (Ala. 2009) ("A court has jurisdiction to determine its own jurisdiction.").

Conclusion

The circuit erred by not granting Rhodes a hearing on his postjudgment motion. Since that motion had probable merit, the circuit court's error was not harmless. We therefore reverse the circuit court's order denying Rhodes's postjudgment motion and remand the cause for the circuit court to conduct the required hearing, to determine the extent of its subject-matter jurisdiction, and to conduct any further proceedings required by that jurisdictional determination.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.