FILED
October 15, 1999
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
October 18, 1999
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 25806 -- State of West Virginia ex rel. Carolyn Shrewsberry and Herndon Processing Company vs. Honorable John S. Hrko and Bobbie Shrewsberry

Starcher, C.J., concurring:

The starting place in every lawsuit and the first question every lawyer asks, is "Where is jurisdiction for my case?" In this case, there is a conflict between two people over who will get to be the administratrix of the estate of Eddie Dean Shrewsberry. Each of those parties is represented by a different lawyer, and each of those lawyers has filed a lawsuit against Mr. Shrewsberry's employer alleging that the employer was somehow responsible for his death. Unfortunately, the lawyers for neither Carolyn Shrewsberry nor Bobbie Shrewsberry have ever asked the obvious question: "Which county commission has jurisdiction to hear this case -- Raleigh County or Wyoming County?"

As the majority opinion discusses, the jurisdiction of a county commission over the subject matter of Mr. Shrewsberry's intestate estate is set by *W.Va. Code*, 44-1-4 [1923] and *W.Va. Code*, 41-5-4(a) [1923]. These two statutes, when read together, give jurisdiction to the county commission "[i]n the county wherein [Mr. Shrewsberry], at the time of his death, had a mansion house or known place of residence[.]"

Whether a court or county commission has subject-matter jurisdiction is a question that can be raised and debated *at any time*. As this Court has said many times, "Lack of jurisdiction of the subject matter may be raised in any appropriate manner . . . and *at any time* during the pendency of the suit or action." *McKinley v. Queen*, 125 W.Va. 619,

625, 25 S.E.2d 763, 766 (1943) (emphasis added). Lack of subject matter jurisdiction can even be raised for the first time in this Court, or the Court on its own motion may take notice that it or a lower court did not have jurisdiction. Syllabus Point 1, *Dawson v. Dawson*, 123 W.Va. 380, 15 S.E.2d 156 (1941). Once a court discovers it does not have subject-matter jurisdiction of a particular case, it ceases to have any power to rule and must dismiss the case.

The majority opinion affirms the notion that the Raleigh County Commission did not abuse its discretion in allowing Carolyn Shrewsberry to amend her administration papers. However, the record reflects that no evidence has been taken by the Raleigh County Commission regarding the "mansion house or known place of residence" of Mr. Shrewsberry at the time of his death, and therefore no findings of fact have been made to support the Commission's subject-matter jurisdiction. As we held in Syllabus Point 3 of *Yates v. Taylor County Court*, 47 W.Va. 376, 35 S.E. 24 (1900), "[i]n courts of limited and inferior jurisdiction, the record must show jurisdictional facts." In other words, the jurisdiction of a county commission "must affirmatively appear by sufficient evidence or proper averment in the record, or their judgments will be deemed void on their face." 47 W.Va. at 381, 35 S.E. at 26 (*quoting Galpin v. Page*, 85 U.S. 350, 366, 21 L.Ed. 959, 963 (1873)).

The *sole* issue raised by the parties in the Circuit Court of Raleigh County was whether the Raleigh County Commission abused its discretion in appointing the petitioner, Carolyn Shrewsberry, as the administratrix of Mr. Shrewsberry's estate, in light of the fact that the petitioner put incorrect information on her application to be administratrix. The

ruling by the circuit court that the Raleigh County Commission did not abuse its discretion in allowing the amendment of that application was never appealed.

What was never resolved, before either the circuit court or the Raleigh County Commission, was whether Mr. Shrewsberry was a resident of Raleigh County or Wyoming County at the time of his death. If Mr. Shrewsberry owned a "mansion house" or had a "known place of residence" in Raleigh County at the time of his death, then as a matter of law, the Raleigh County Commission has no subject matter jurisdiction to adjudicate the disposition of Mr. Shrewsberry's estate. Therefore, the proper forum for respondent Bobbie Shrewsberry in which to challenge the subject-matter jurisdiction of the Raleigh County Commission is not before the Circuit Court of Wyoming County, but is before the Raleigh County Commission itself.

An issue that was raised by the parties on appeal but not addressed by the majority opinion is whether the petitioner could legitimately act as the administrator of her ex-husband's estate. *W.Va. Code*, 44-1-4 [1923] requires that within 30 days of the death of an intestate person, administration of the estate "shall be granted to the distributees who apply therefor" within 30 days of the death. It is not clear to me that the petitioner qualifies as a "distributee" of Mr. Shrewsberry's estate.

A "distributee" is defined by *W.Va. Code*, 42-1-1(8) [1995] as a "person who has received property of a decedent from his or her personal representative other than as a creditor[.]" In other words, a distributee is an "heir" to an estate. An "heir" is a person who

is "entitled under the statutes of intestate succession to the property of a decedent." *W.Va. Code*, 42-1-1(16) [1995].

Petitioner Carolyn Shrewsberry, as the ex-wife of the decedent, is listed nowhere in the *West Virginia Code* as a person entitled to the property of Mr. Shrewsberry. An ex-wife does not automatically qualify as a "distributee," as would a spouse, child, or *parent of a decedent. See W.Va. Code*, 42-1-3a [1992]. Therefore, Carolyn Shrewsberry does not immediately qualify as the administrator of Mr. Shrewsberry's estate. The petitioner contends, however, that in cases from early this century the Court approved the appointment of administrators who could not statutorily qualify as administrators, but who were acting as representatives for the distributees. *See Murphy v. Karnes*, 88 W.Va. 242, 106 S.E. 655 (1921) (grandfather appointed to represent interests of infant children); *In re Stollings' Estate*, 82 W.Va. 18, 95 S.E. 446 (1918) (wife, barred from being a distributee because she abandoned her decedent-husband and children, appointed administratrix of husband's estate for the benefit of distributee infant children). I question whether these cases continue to be valid in light of the many recent revisions to the laws of descent and distribution.

Furthermore, I am troubled by the petitioner's appointment in three respects. First, when the petitioner filed her application to become the administratrix of her ex-husband's estate, she held herself out as the wife of Mr. Shrewsberry. She also did not list any of Mr. Shrewsberry's nine children as beneficiaries of his estate, but instead listed only herself.

Second, the petitioner repeatedly contended before this Court that she is acting on behalf of Mr. Shrewsberry's eight children -- yet the record clearly suggests Mr. Shrewsberry had a ninth child with a woman other than the petitioner. The petitioner simply rejects the notion that this ninth child is or could be the progeny of Mr. Shrewsberry. But the fact remains, if the child is Mr. Shrewsberry's offspring (and that determination apparently has not been made), then the child is a distributee of his estate. Because the petitioner has stated before this Court that she refuses to address the potential interests of this ninth child, the Raleigh County Commission (or Wyoming County Commission, if it has jurisdiction) should examine whether the petitioner's appointment is warranted.

Third, I am troubled by the fact that the petitioner may be a creditor of Mr. Shrewsberry's estate. In the appointment of an administrator of an intestate estate, *W.Va. Code*, 44-1-4 [1923] creates a preference for distributees over creditors. The statute states that creditors may apply to be administrators only if no qualified distributee petitions for administration within 30 days of the decedent's death.

How can the petitioner be a creditor of Mr. Shrewsberry's estate? At the time of the Shrewsberrys' divorce, *W.Va. Code*, 48-2-15(f) [1984] required circuit courts, in a divorce decree awarding alimony, to "state specifically . . . whether such payments of alimony are to be continued beyond the death of the payor party or cease." However, if the circuit court did not mention whether alimony continued beyond the death of the payor, this

Court has held that principles of equity apply and the payee spouse may continue to receive alimony payments from the decedent's estate.[1]

The July 17, 1996 divorce decree for the petitioner and Mr. Shrewsberry awards the petitioner "permanent alimony in the amount of Three Hundred Dollars ($300.00) per month commencing on the 1st day of July, 1996 until the [petitioner] remarries or further Order of the Court." No mention is made in the divorce decree as to whether the petitioner is entitled to receive alimony payments from Mr. Shrewsberry's estate, or whether the payments automatically ended at his death. Accordingly, under principles of equity, the petitioner could be entitled to recover alimony payments from Mr. Shrewsberry's estate.

Because the petitioner stands to gain monthly alimony payments from Mr. Shrewsberry's estate, she is a creditor of the estate. Therefore, pursuant to *W.Va. Code*, 44-1-4, it appears that she could apply to be an administrator of Mr. Shrewsberry's estate only if no other qualified distributee petitioned for administration in the first 30 days after his death.

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[1]In Syllabus Point 2 of *In re Estate of Hereford*, 162 W.Va. 477, 250 S.E.2d 45 (1978), we stated:

> While as a general rule alimony does not survive the death of the payor former spouse, where there are compelling equitable considerations which militate in favor of making alimony a charge against a deceased former spouse's estate, the circuit court has the power to make such an award pursuant to the same authority which entitled a court of equity to modify any alimony award to reflect changed circumstances.

In accord, Syllabus Point 1, *Matter of Estate of Weller*, 179 W.Va. 804, 374 S.E.2d 712 (1988).

In conclusion, none of these issues have ever been addressed by the parties or the Raleigh or Wyoming County Commissions. No one has ever challenged the jurisdiction of the Raleigh County Commission, nor litigated the fact that petitioner is not a distributee but is instead a creditor of the estate.

The only issue placed before this Court was whether the Circuit Court of Raleigh County issued a final, unappealed order regarding whether the Raleigh County Commission abused its discretion in appointing the petitioner as administratrix, and whether that order could be ignored by the Circuit Court of Wyoming County. Because that Raleigh County order was not appealed, the respondent could not collaterally attack the order in the Circuit Court of Wyoming County.

I therefore concur with the majority's decision to issue the writ of prohibition.