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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF THE ESTATE OF)
DONALD LEE EMERSON:)

JOAN EMERSON and MINDY BLUNK,)
as power of attorney for Joan Emerson,)

Appellants,)

vs.)

JACENDA ANDERSON, as personal)
representative,)

Appellee.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE LYDIA Y. GREEN, DISTRICT JUDGE

DISMISSED IN PART AND AFFIRMED IN PART

Chad N. Davis
CHAD N. DAVIS ATTORNEY AT LAW, LLC
Enid, Oklahoma

For Appellant

Juston R. Givens
Mark H. Bennet
Zachary A. Carson
PERRI DUNN PLLC
Oklahoma City, Oklahoma

For Appellee

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Joan Emerson, ex-wife of the decedent, Donald Emerson, appeals the court's order determining that the decedents' children were pretermitted heirs.

Joan also alleges her due process rights were violated and that the decedent's daughter, Jacenda Anderson, should not have been appointed personal representative of the decedent's estate. Upon review, we find that Joan's appeal of the court's determination of heirs was premature and is hereby dismissed. Additionally, we find that Joan's due process rights were not violated and that she did not properly appeal from the court's order appointing Jacenda as personal representative of Don's estate.

I.

This case involves the holographic will and revocable living trust executed by Donald Lee Emerson, who we will refer to as Don. Don had three children: Brian Emerson, Jacenda Anderson, and Monica Sapp. At the time of his death, Don was apparently living in a state of reconciliation with his ex-wife, Joan Emerson. Don and Joan divorced in 1994, and it is undisputed that they never remarried. Don's three heirs are his adult children from a previous relationship, notably Brian, Jacenda, and Monica.

Don died on December 26, 2020. His son, Brian, and Don's brother, Freddie Emerson, filed a petition for letters of special administration on January 12, 2021. No will had been found at this time. The court appointed Brian and Freddie as co-special administrators of Don's estate.¹

¹ Freddie later voluntarily withdrew as co-administrator due to ongoing health concerns.

However, on February 22, 2021, Joan, by and through her daughter and attorney-in-fact, Mindy Blunk,² filed an objection and cross-petition for probate because she had found a one-page holographic will executed by Don which named her as the executor.³ Additional documents filed that day, attached to a filing entitled "Cover Sheet," were the proffered holographic will, a trust executed by Don, and another handwritten document containing certain instructions and notations pertaining to Don's estate. Shortly thereafter, Brian filed an inventory and account of the estate. The record reflects that the parties engaged in significant motion practice regarding a variety of discovery issues.

On August 21, 2023, both Joan and Brian filed their own respective motions for summary judgment. In her motion, Joan asked the court to find that the holographic will was validly executed and should be admitted to probate, that the Don L. Emerson Living Trust was validly executed and the assets transferred to the trust should be excluded from the estate, and that Mindy Blunk, as power of attorney for Joan Emerson, should be appointed as executor of the estate. In his motion for summary judgment, Brian asked the court to determine that the will only appointed an executor, that the will did not dispose of any estate property, and that Don's three children, including himself, were pretermitted heirs.

² Joan was involved in an accident shortly after her and Don's divorce during which she suffered a traumatic brain injury. Her daughter from a previous relationship, Mindy Blunk, has power of attorney for Joan.

³ The will explicitly states that Joan was to be his "executive over everything."

It appears the court held a series of hearings on these issues, and a minute order filed on December 15, 2023, reflects that the court granted Joan's motion for partial summary judgment and denied Brian's. The court minute also stated that the holographic will was approved and admitted to probate, and that ruling has not been challenged by any party. Brian filed a motion to reconsider the summary judgment decisions; however, his motion was denied. The court issued separate orders appointing Joan and Mindy to serve as the executrixes over Don's estate.

At some point, a question was raised regarding Joan's competency to serve as the personal representative. On December 26, 2024, the court issued a journal entry stating that it had reviewed Joan's deposition transcript and a video of the deposition. Based on its review, the court removed Joan as personal representative and found that because Joan was removed, Mindy Blunk was also removed. The court, apparently on its own motion, appointed Gerald E. Kelley as personal representative and issued letters of administration to him.

On March 21, 2025, Jacenda Anderson, Don's daughter, filed a petition to remove Mr. Kelley as personal representative, alleging that as a surviving child of the decedent she had a prior right to be issued letters of administration. Joan objected, alleging that Jacenda failed to comply with certain statutory and notice requirements. On June 17, 2025, the court held a hearing on the personal representative issue and the determination of heirs. Regarding the determination of heirs, Joan argued that the trust must be read together with the will to show Don's intent to provide for her and to disinherit his children.

The court issued letters of administration to Jacenda on June 17, 2025. Additionally, the court issued a separate order on July 22, 2025, finding that the holographic will, which did not mention Don's children, was clear and unambiguous and did not incorporate the trust by reference; therefore, extrinsic evidence, *i.e.*, the trust, was inadmissible to ascertain the decedent's intent. Accordingly, the court determined that Brian, Jacenda, and Monica were pretermitted heirs.

Joan appeals, raising three propositions of error. She contends that the trial court erred in its interpretation of the will finding that Brian, Jacenda, and Monica were pretermitted heirs, that the probate court's denial of a court reporter at a pretrial conference constituted a violation of her due process rights, and that the trial court erred in appointing Jacenda to replace Mr. Kelley as personal representative of Don's estate.

II.

Whether the trial judge erred by determining that Brian, Jacenda, and Monica were heirs and beneficiaries under the terms of the decedent's will—involves both a review of the trial court's factual determinations and interpretation of a testamentary instrument. *Matter of Estate of Evans*, 2025 OK 89, ¶ 8, 581 P.3d 101, 105. When reviewing a lower court's interpretation of a last will and testament, we are guided by the cardinal rule mandating “[construction] according to the intention of the testator.” 84 O.S. § 151. We have noted many times, “[p]robate proceedings are of equitable cognizance. While the Court will examine the whole record and weigh the evidence, the trial court's

findings will not be disturbed on review unless they are clearly against the weight of the evidence or some governing principle of law.” *Matter of Estate of Sneed*, 1998 OK 8, ¶ 8, 953 P.2d 1111, 1115.

When a case is brought before this court on appeal, we have an independent duty to inquire into our own jurisdiction as well as that of the trial court. *Matter of S.J.W.*, 2023 OK 49, ¶ 7, 535 P.3d 1235, 1240. No appeal lies from a non-final, interlocutory order entered while a case remains pending unless the order falls within a category expressly made appealable by statute prior to the entry of final judgment in the underlying action. *Dennis v. Lathrop*, 1951 OK 87, ¶¶ 3-4, 204 Okla. 684, 233 P.2d 969, 970.

III.

A.

Regarding Joan’s first proposition of error—challenging the finding that Brian, Jacenda, and Monica are pretermitted heirs—we find the Oklahoma Supreme Court’s recent holding in *Matter of Estate of Evans*, 2025 OK 89, ¶ 11, 581 P.3d 101, 106, instructive here. In *Evans*, the Court found that an “order determining heirs, devisees, and legatees is not an order affecting a substantial right under 58 O.S.2021, § 721(10), and therefore, is not immediately appealable.” *Id.* In so holding, the Court examined 58 O.S. § 240(D) which provides as follows:

Any determination of heirs, legatees and devisees made pursuant to this section shall be conclusive for the purpose of acting upon any petition or application purporting to include waivers or consents of all heirs, devisees, and legatees, but shall not establish the proportional interest of any person entitled to receive any distribution of assets or property from the estate; nor shall it prevent

any person or entity from later establishing identity or rights as an heir, devisee or legatee.

The Court explained that this section of the statute makes clear that an order identifying heirs and beneficiaries is “interlocutory and subject to modification.” *Id.* ¶ 13. Accordingly, the Court held that a request to amend or revisit a prior determination concerning heirs, devisees, or legatees may be presented any time before entry of a final judgment in the probate proceeding. *Id.* Therefore, the rights of any beneficiaries are not final until entry of a decree distributing an estate in accordance with 58 O.S § 632.

Based on the Court’s recent pronouncement in *Evans*, we find that Joan’s appeal challenging the court’s determination that Don’s children are pretermitted heirs is premature.

B.

Joan next alleges that she paid to have a court reporter for the pretrial conference on June 5, 2025; however, the trial court allegedly did not allow the court reporter to be present, which violated her due process rights. In support of this argument, Joan cites 20 O.S. § 106.4 which provides that “[a] refusal of the court to permit or to require any statement to be taken down by the court reporter or transcribed after being taken down, upon the same being shown by affidavit or other direct and competent evidence, to the Supreme Court, or other appellate court, shall constitute a denial of due process of law.” Joan, however, does not point us to an affidavit or other competent evidence showing the court refused to allow a court reporter to transcribe the hearing. Additionally, on June 12, 2025, Joan filed a motion to settle regarding the pretrial conference order,

and the motion does not mention the court's purported failure to allow a court reporter at the hearing. While Joan might have paid for a court reporter to be at the hearing,⁴ there is no record of her request, the court's denial of any request, or that Joan otherwise made a due process objection upon any refusal by the court to allow a court reporter at the hearing.⁵

Oklahoma courts have consistently held that it is the appealing party's responsibility to procure a record that is sufficient to obtain the corrective relief sought. "That record, which should incorporate all pertinent and necessary pleadings or other papers, *must always include* a written memorial of the judicial action that triggered the appealable event." *Chamberlin v. Chamberlin*, 1986 OK 30, ¶ 7, 720 P.2d 721, 724. Aside from argument in her appellate brief, Joan does not point us to an affidavit, narrative statement, or any other written memorial demonstrating a request for a court reporter that was denied. Accordingly, this proposition of error is rejected.

C.

Joan also alleges in her brief that the trial court committed reversible error when it removed Mr. Kelley as personal representative of Don's estate and subsequently appointed Jacenda and issued letters of administration to her. However, we note that the only order Joan appealed from was the determination

⁴ We note that the docket sheet does not reflect any payment for a court reporter on or near June 5, 2025.

⁵ Joan could have availed herself of Oklahoma Supreme Court Rule 1.30 which would have allowed her to make a narrative statement showing that she raised the issue with the court, and the court denied her request for a court reporter after one had already been paid for. However, Joan did not make a narrative statement, and we have no way of verifying whether the alleged refusal took place.

of heirs. Additionally, in Exhibit C of her petition in error, Joan asks the court to determine whether the trial court erred in removing *Joan* as executrix, it makes no mention of any alleged error in removing Mr. Kelley and appointing Jacenda. Thus, while she raises the issue of Mr. Kelley's removal and Jacenda's subsequent appointment in her brief, Joan did not appeal the order granting letters to Jacenda. That instrument is neither referenced in Part IV of her petition in error nor attached to that document.

However, Joan is not without recourse should she wish to appeal this order in the future. Title 58 O.S. § 721 provides that an appeal may be taken from an order of the district court granting letters testamentary. Supreme Court Rule 1.60 provides that such orders are immediately appealable, and Rule 1.61 provides that an appeal from such may be commenced by filing a petition in error within thirty days of the order. Or, pursuant to Rule 1.40, parties may assert errors in interlocutory orders in an appeal taken from the *final order* in the case. Thus, Joan is free to appeal from the order granting letters to Jacenda if and when she decides to appeal from the final judgment in this case.

* * *

Joan's appeal of the trial court's determination of heirs is dismissed as premature. This court also finds that there is no record supporting Joan's contention that her due process rights were violated as to the lack of court reporter at the pretrial conference. Further, Joan did not appeal the court's order appointing Jacenda as personal representative of Don's estate and any alleged

error regarding the court's appointment of Jacenda will not be reviewed at this time.

DISMISSED IN PART AND AFFIRMED IN PART.

BARNES, J., and HUBER, J., concur.

August 11, 2026