[Cite as *Crosby-Edwards v. Morris*, 2009-Ohio-2994.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Leeza Crosby-Edwards,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-152 (Prob. No. 492815 WC)
Robert V. Morris et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 23, 2009

Gregory S. DuPont, for appellant.

Law Offices of James P. Connors, and *James P. Connors*, for appellee Dawn Crosby.

APPEAL from the Franklin County Court of Common Pleas, Probate Division.

FRENCH, P.J.

{¶1} Plaintiff-appellant, Leeza Crosby-Edwards ("appellant"), appeals the Franklin County Court of Common Pleas, Probate Division's dismissal of a will contest action for lack of subject-matter jurisdiction and personal jurisdiction. For the following reasons, we affirm.

{¶2} On January 12, 2003, Angela M. Crosby died and left a document purported to be her Last Will and Testament ("the will"). The document was admitted to probate on August 30, 2006. On June 28, 2007, appellant filed a timely complaint to contest the will and named as defendants the successor administrator of the estate and the will's beneficiaries. Appellant requested service on defendant Robert V. Morris, the successor administrator, and defendant-appellee Dawn M. Crosby ("Crosby"), a beneficiary. Appellant did not request service on the other named defendants.

{¶3} Service was perfected on Morris on July 5, 2007. On July 24, 2007, the summons directed to Crosby was returned unserved. On February 28, 2008, appellant filed an amended complaint that provided previously unknown addresses for the other named defendants. Appellant again requested service on Crosby, while also requesting service on the other defendants. The summons directed to Crosby was again returned unserved. Service was also unsuccessful for the remaining four defendants.

{¶4} As of June 28, 2008, one year after appellant filed her complaint, service had not been perfected on Crosby or four other defendants. On September 2, 2008, appellant filed an affidavit and requested service on the remaining, unserved defendants by publication. On September 12, 2008, Crosby filed a motion to dismiss the will contest action for lack of subject-matter jurisdiction and personal jurisdiction.

{¶5} The trial court determined that Crosby and the remaining four defendants, as named beneficiaries under the will, were necessary parties to the will contest action pursuant to R.C. 2107.73(A). The trial court held that appellant did not properly commence the will contest action because she failed to perfect service upon the named,

necessary parties within one year pursuant to Civ.R. 3(A). The trial court dismissed the action for lack of jurisdiction pursuant to Civ.R. 12(B)(1) and (2).

{¶6} Appellant appeals and assigns the following error:

> The trial court committed reversible error by determining that a Plaintiff in a will contest must perfect service upon all parties enumerated in R.C. 2107.73 within one year of the filing of a will contest.

{¶7} Our standard of review for a dismissal, pursuant to Civ.R. 12(B)(1), is whether the complaint raises any cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80. We review an appeal of a dismissal for lack of subject-matter jurisdiction and personal jurisdiction de novo. *Guillory v. Ohio Dept. of Rehab. & Corr.,* 10th Dist. No. 07AP-861, 2008-Ohio-2299, ¶6; *Barnabas Consulting Ltd. v. Riverside Health Sys., Inc*., 10th Dist. No. 07AP-1014, 2008-Ohio-3287, ¶12. A de novo review requires us to review the trial court's decision without any deference to the trial court's determination. *State v. Standen*, 173 Ohio App.3d 324, 2007-Ohio-5477, ¶7.

{¶8} Appellant contends that the trial court erred when it dismissed the will contest action because she did not perfect service upon the named parties within one year pursuant to Civ.R. 3(A). We disagree.

{¶9} Civ.R. 3(A) provides: "A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant." "By its very terms, then, Civ.R. 3(A) mandates that a plaintiff satisfy two conditions in order to commence a civil action: (1) the complaint must be filed, and (2) service must be obtained within one year from the filing." *Schafer v. Sunsports Surf Co., Inc*., 10th Dist. No. 06AP-370, 2006-Ohio-6002, ¶10. Civ.R. 3(A) does not extend the period for

commencing an action. *Weaver v. Donnerberg* (1985), 26 Ohio App.3d 112, 115-16. Rather, a civil action must still be commenced within the limitation period and is subject to being voided if service has not been perfected within one year. Id. at 116. Thus, "[u]nder Civ.R. 3(A), an action is not deemed to be 'commenced' unless service of process is obtained within one year from the date" the action is filed. *Saunders v. Choi* (1984), 12 Ohio St.3d 247, 250.

{¶10} Pursuant to R.C. 2107.71, a person interested in a will admitted to probate may contest its validity by a civil action in the probate court in the county in which the will was admitted to probate. R.C. 2107.73 enumerates the persons who are necessary parties to a will contest. Necessary parties include "[a]ny person designated in a will to receive a testamentary disposition of real or personal property." R.C. 2107.73. R.C. 2107.72(A) provides that the Rules of Civil Procedure govern all aspects of a will contest action, except as otherwise provided in R.C. 2107.71 through 2107.77. See *Roll v. Edwards*, 4th Dist. No. 05CA2833, 2006-Ohio-830, ¶54.

{¶11} This court has previously held that failure to perfect service within one year on a necessary party to a will contest constitutes a failure to commence an action within the time prescribed by Civ.R. 3(A). In *Hall v. Ohio Natl. Bank* (Oct. 4, 1977), 10th Dist. No. 77AP-330, the plaintiff filed an action to contest a will and included as a defendant the decedent's next of kin. The summons issued to the defendant was returned undelivered, and the plaintiff did not obtain service on the defendant, a necessary party, within one year from the filing of the action. Id. This court held that "[i]n a will contest action the failure to serve one of the necessary parties constitutes a failure to commence the action

within the prescribed time limits" and thus, because of the failure, a trial court lacks jurisdiction to proceed with the case. Id.

{¶12} Here, the appellant filed her will contest on June 28, 2007. In the complaint, appellant named as defendants those persons receiving testamentary disposition under the will. Persons receiving testamentary disposition are necessary parties to a will contest action. R.C. 2107.73. Pursuant to Civ.R. 3(A), appellant had one year from the date of filing to perfect service on the named defendants. As of June 28, 2008, appellant had failed to perfect service on five of the named defendants. Thus, under *Hall*, we conclude that the trial court did not have jurisdiction to hear the case and that dismissal was proper.

{¶13} Furthermore, we decline to apply the unity of interest theory asserted by appellant. Appellant cites *Draher v. Walters* (1935), 130 Ohio St. 92, syllabus, for the proposition that service upon one of the legatee-devisee defendants in a will contest is sufficient to commence the action as to each of the defendants of that class. In *Draher*, the court held that, in a will contest action, "the legatee-devisee defendants are so united in interest as to render service of summons upon any one of them within the time set by statute sufficient to constitute commencement of the action against all of them," thus giving a court jurisdiction over the entire estate. Id. at 95.

{¶14} This court considered the "united in interest" doctrine in *Hirsch v. Hirsch* (1972), 32 Ohio App.2d 200. In *Hirsch*, we stated:

> The "united in interest" doctrine was predicated upon an interpretation of G.C. 11230 (later R.C. 2305.17). R.C. 2305.17 was amended in 1965 (131 Ohio Laws 646) and the language upon which the "united in interest" doctrine was predicated was deleted from the section. The civil rules

> contain no provision similar to that formerly contained in R.C. 2305.17 upon which the "united in interest" doctrine was predicated. Accordingly, it is doubtful that the "united in interest" doctrine, as such, is still a viable doctrine.

Id. at 209. Appellant does not address *Hirsch*, nor does she cite any support for the proposition that the doctrine applies to will contests filed under R.C. Chapter 2107. Instead, appellant cites only *Peters v. Moore* (1950), 154 Ohio St. 177, which stated that jurisdiction failed in a will contest filed under General Code provisions unless an executor was made a party and was served properly. Based on the reasoning expressed in *Hirsch* and *Hall*, as well as the express language of the applicable statutes, we decline to apply the united in interest doctrine here.

{¶15} In conclusion, we overrule appellant's assignment of error and affirm the judgment of the Franklin County Court of Common Pleas, Probate Division.

Judgment affirmed.

SADLER and McGRATH, JJ., concur.