

Rel: April 17, 2026

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2025-2026

SC-2024-0857

Grant A. Banks

v.

Shannon P. Banks, individually, as personal representative of
the Estate of Raymond L. Banks, deceased, and as trustee of the
Banks Family Trust

Appeal from Winston Circuit Court
(CV-22-900063)

PER CURIAM.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Wise, Sellers, and Parker, JJ., concur.

Shaw, J., concurs in the result, with writing, which Mendheim, J., joins.

Bryan, J., dissents, with writing, which Stewart, C.J., joins.

Cook, J., dissents, with writing.

McCool, J., dissents.

SHAW, Justice (concurring in the result).

This case involves a dispute between Shannon P. Banks and Grant A. Banks, who are the beneficiaries of the will of their father, Raymond L. Banks. Shannon and Grant have different mothers, both of whom claimed to be the common-law wife of Raymond.

The parties had disagreements. Grant had apparently sought information about the estate's financial status. Shannon, the estate's executor, alleged that he had turned over certain documentation that he alleged was sufficient to meet Grant's request, but he refused to disclose more information without a nondisclosure agreement. This was intended to prevent information from being shared with Grant's mother, who Shannon claimed was interfering with the estate and family-owned business operations.

Grant, through his legal counsel, requested that the Winston Circuit Court compel Shannon to file an inventory and accounting. Shannon, in turn, filed a response that argued that he had already provided an inventory. He also contended that the will required that this dispute over information, and other then-existing disputes between the parties, be resolved by a private advisory committee. Regarding the

advisory committee's decisions, the will states: "The decision of [the] Advisory Committee ... shall be final and not subject to appeal to or before any tribunal or court of law or equity; and, such decision shall not be subject to further appeal or any court proceedings to the contrary"

Shannon further argued that the advisory committee should determine whether certain conduct by Grant violated the will's in terrorem clause. The purpose and effect of an in terrorem clause has been described as being

"to prevent the inauguration or prosecution of a suit or contest in the courts, commenced with the view of defeating the will of the testator as he had seen fit to make it. Such contests often breed irreconcilable family feuds, and lead to disgraceful family exposures. They not unfrequently, too, waste away vast estates, by protracted and extravagant litigation."

Kershaw v. Kershaw, 848 So. 2d 942, 950 (Ala. 2002) (quoting Donegan v. Wade, 70 Ala. 501, 505 (1881)).

Grant, through counsel, filed a reply. He argued, among other things, that his request for an inventory and accounting was proper and that he did not otherwise violate the in terrorem clause. He stated no objection to the matter being decided by the advisory committee. Shannon, in response, contended that the terms of the will controlled and

that it required the advisory committee to determine whether, pursuant to the in terrorem clause, Grant had forfeited his interest in Raymond's estate.

The circuit court entered an order requiring the parties to submit their issues to the advisory committee. It stated: "[F]urther proceedings in this matter are stayed pending review by the Advisory Committee as required in accordance with the express instructions set forth in the [will] as to the question of whether Grant Banks has forfeited all interests in his late father's Estate" On July 3, 2024, Grant's guardian ad litem filed a motion to alter, amend, or vacate, which Grant describes in his brief on appeal as arguing that

"1) any alleged forfeiture should not be considered by an Advisory Committee based on Shannon Banks'[s] apparent belief that Grant was being intimidated or prevented from speaking with him about Estate issues by Grant's mother; 2) a petition to compel inventory and accounting did not trigger any forfeiture under the Will; 3) there was no identified Advisory Committee in [Raymond's] Will; and 4) if an Advisory Committee did exist, the only issue it should consider was whether Grant's request for an inventory and accounting, consistent with Item XI of the Will granting him that right, was reasonable -- not whether Grant had allegedly forfeited his inheritance."

Grant's brief at 28. The motion also contended that it was in Grant's best interests for the half brothers, instead of the advisory committee, to personally resolve their disputes. That motion did not argue that the advisory committee was not empowered or not authorized to determine whether a forfeiture had occurred.

The circuit court denied the motion, stating that Shannon had previously provided a "detailed inventory" to both the guardian ad litem and Grant's counsel. Further, it held that the language of the will was unambiguous and clearly required that the parties' dispute be presented to the advisory committee for resolution: "The language of [the will] is unambiguous and clearly directs that 'any claim or dispute' involving [the will or the estate] ... is to be presented to [the] Advisory Committee for resolution. That language must govern."

The orders referring the parties' dispute to the advisory committee indicate that the terms of the will were clear to the circuit court and that the advisory committee would decide the parties' dispute. As noted above, those terms also provided that the advisory committee's decision would be final and not subject to review by a court. I express no opinion as to the legality of the will's terms; instead, I note that the stated role of

the advisory committee and the stated effect of its decision were clear at the time the circuit court issued its orders requiring that the advisory committee consider the issues.

The advisory committee's decision detailed that it had attempted to contact both Grant and his mother but had received no response. It further found that Grant had violated the in terrorem clause and "should be disinherited." The circuit court initially entered a judgment "without prejudice" to that effect. Grant, through counsel, filed a postjudgment motion challenging the legality of the advisory committee's role in this case. Shannon also filed a postjudgment motion asking that the judgment be amended. The circuit court later entered a judgment "with prejudice," which again embraced the advisory committee's decision.

Grant had meaningful opportunities to object to the advisory-committee process set forth in the will. In fact, a challenge to whether the in terrorem clause should be enforced was raised to the circuit court both after Shannon proposed that the advisory committee make that decision and again after the issue was referred to that body. It was known that the advisory committee would decide the issue, and it was clear that the will provided that its decision would be final and could not

be challenged. The advisory committee then met and reached its decision. Apparently, Grant did not participate. It was not until after the advisory committee ruled against him that Grant, in his postjudgment motion, challenged its authority to rule in the first place, and it appears that the circuit court did not consider that argument. Cf. Espinoza v. Rudolph, 46 So. 3d 403, 416 (Ala. 2010) (When "[t]here is no indication that the trial court considered the merits of [a] legal argument raised for the first time in [a] postjudgment motion, ... we will not presume that it did.").¹ Whether it is considered an issue of invited error, waiver, or untimeliness, I do not believe that the public-policy challenge regarding the enforceability or propriety of the dispute-resolution mechanism provided by the will is an issue properly before this Court to decide on appeal.

I agree that the circuit court's judgment is due to be affirmed, without an opinion, pursuant to Rule 53(a), Ala. R. App. P. However, I concur in the result because I do not agree with all the language and

¹While a judgment without prejudice does not decide a case on the merits, Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995), the issue here is the timeliness of an argument, or waiver thereof, for purposes of appeal.

SC-2024-0857

rationale of this Court's memorandum issued in support of that
affirmance.

Mendheim, J., concurs.

BRYAN, Justice (dissenting).

I respectfully dissent from the Court's decision to affirm the judgment of the Winston Circuit Court in this action. In this case, the circuit court's judgment effectively adopted the decision of a private advisory committee that had apparently determined that certain conduct taken on behalf of a minor had worked a forfeiture of the minor's inheritance from his deceased father, which likely resulted in the minor's loss of an equal share of an estate worth millions of dollars.

In its judgment upholding the advisory committee's decision, the circuit court appears to have concluded that it had no say in the matter. Specifically, the circuit court seemingly determined that the testator's intent, as expressed in certain provisions of his will, required the circuit court to be bound by the result of a "mandated mechanism for the private resolution of any disputes [(the advisory committee)] [as] a condition precedent to any inheritance or benefit under the estate and in the Banks Family Trust." (Capitalization omitted.) Although the minor had reached the age of majority before the advisory committee made its forfeiture determination, as noted above, it appears undisputed in this case that the conduct resulting in the forfeiture occurred while he was still a minor.

I disagree with the circuit court's apparent conclusion that it had no authority to consider whether the conduct of a minor appearing before it as part of the administration of an estate had worked a forfeiture of the minor's inheritance under the will. This Court has explained:

"It is a principle long-existing in Anglo-American jurisprudence that a court of equity is the guardian and protector of the rights of minors who come before it. The court [i]s under a continuing duty, as we view it, to exercise extraordinary precautions relative to the interest of the minor.

"It needs no citation of authority to state that the law required that this minor was entitled to have his day in court. Darrington et al. v. Borland, 3 Port. 9[, 23 (Ala. 1836)]; Collins v. Gillespy, 148 Ala. 558, 41 So. 930 [(1906)]; Shehane v. Caraway, 154 Ala. 391, 45 So. 469 [(1908)]; Conway v. Clark, 177 Ala. 99, 58 So. 441 [(1912)]; Bank of Luverne v. Turk et al., 222 Ala. 549, 551, 133 So. 52 [(1930)]; Midgley v. Ralls, 234 Ala. 685, 176 So. 799 [(1937)]; Pritchett v. Dixon, 222 Ala. 597, 133 So. 283 [(1931)]; Hall v. Hall, 280 Ala. 275, 280, 192 So. 2d 727 [(1966)]."

Citizens Walgreen Drug Agency, Inc. v. Gulf Ins. Co., 282 Ala. 648, 652, 213 So. 2d 814, 817-18 (1968).

We have also stated that "this court has a duty ex mero motu to protect the welfare of its minor ward who is before the court." Hall v. Hall, 280 Ala. 275, 280, 192 So. 2d 727, 731 (1966).

Background

In this case, the executor of the testator's estate and the testator's older son, Shannon P. Banks ("Shannon"), filed a motion in May 2024 to stay the circuit court's proceedings pending a determination of the advisory committee regarding whether the testator's younger son, Grant A. Banks ("Grant"), had forfeited his inheritance under the will pursuant to an in terrorem clause in the will. In the motion, Shannon noted that Grant was "currently still a minor" and asserted, among other things:

"Rather than meet with Shannon and counsel, his brother Grant's counsel have now resorted to further litigation, instead of seeking an amicable resolution of their dispute, by the filing their pending motion to compel disclosure of sensitive and confidential business records, without providing any assurances for the safeguarding and protection of that information."

Shannon further suggested: "Grant's status as a minor warrants the Court's further inquiry as to those true reasons for such a requested filing." (Emphasis added.) As additional evidence of Grant's conduct that he said amounted to a violation of the in terrorem clause, Shannon pointed to petitions filed on Grant's behalf seeking allowances as the testator's minor child, to Grant's nomination of a conservator in a separate conservatorship proceeding regarding Grant, and Grant's

petition seeking a removal of the administration of the will from probate court to the circuit court.

In response to Shannon's motion, Grant's attorney argued, among other things, that the in terrorem clause should be narrowly construed to avoid forfeiture, that Grant had not violated the in terrorem clause, and that the provisions of the testator's will did not deprive the circuit court of subject-matter jurisdiction over the action. In a responsive brief, Shannon further argued that, "[b]y those actions taken on behalf of Grant ..., the immediate forfeiture of his inheritance and any benefits under the Banks Family Trust was triggered."

The circuit court then entered an order staying proceedings in that court pending a review by the advisory committee "as to the question of whether Grant Banks has forfeited all interests in his late father's estate and the Banks Family Trust."

Grant's guardian ad litem then filed a motion to alter, amend, or vacate the circuit court's order staying further proceedings pending the advisory committee's review. Grant's guardian ad litem asserted that he did "not believe [that] referring this matter to any alleged advisory committee to determine whether [Grant], a minor, has forfeited all

interest in his late father's estate to be in the best interests of the minor" (Emphasis added.) Grant's guardian ad litem further argued that "any alleged forfeiture should not be considered by an advisory committee based on the affidavit of Shannon ..., which alleges that [Grant], a minor, is being prevented or intimidated from speaking with him." (Emphasis added.) The guardian ad litem also argued that, "[f]or the minor [Grant], through his attorney, to ask for an inventory and accounting is not a will contest and should not trigger any forfeiture argument" and that, "[f]or the personal representative of the estate to assert any alleged forfeiture of the estate proceeds by [Grant], a minor, is unfounded and unconscionable." (Emphasis added.) The guardian ad litem further asserted that "a dispute that should be considered by the [advisory] committee is whether it is reasonable for Grant ... to request an accounting, not a forfeiture." The guardian ad litem concluded:

"Shannon ... has consistently indicated to the undersigned that he wants a relationship with his brother and is concerned about his well-being. If Shannon ... is sincere in this regard, any alleged forfeiture issue should not have been raised[,] and the undersigned would ask that it not be considered by any alleged advisory committee. Instead, the undersigned would ask that this matter be stayed to allow the advisory committee to attempt to resolve any issues between [Grant] and his brother, Shannon ..., and to not consider any alleged issue of forfeiture.

"Wherefore, based on the above, the undersigned ... guardian ad litem for the minor beneficiary ... files this ... motion requesting the Court to alter, amend, or vacate the [stay] order"

(Emphasis added.)

The circuit court later entered an order providing, in relevant part:

"The language of [the] will is unambiguous and clearly directs that 'any claim or dispute' involving [the testator's] last will and testament, his estate, or the Banks Family Trust, is to be presented to [the] advisory committee for resolution. That language must govern.

"Accordingly, the motion to alter, amend, or vacate is denied. The stay of these proceedings pending inquiry by the advisory committee remains in place.

"However, the Court clarifies its order ... in accordance with the express instructions as set forth in the ... will ... that 'any claim or dispute' raised by any party may be brought before and considered by [the] advisory committee, including, but not limited to, the question of forfeiture or no forfeiture."

(Emphasis added; capitalization omitted.)

On December 3, 2024, the circuit court entered a "final order" stating that it had received the advisory committee's report and providing, in relevant part:

"... [T]he ... will ... provides express instructions regarding [the testator's] mandated private mechanism for the resolution of any disputes involving his estate and the Banks Family Trust.

"... [The testator] made mandatory a beneficiary's adherence to those instructions making his mandated mechanism for the private resolution of any disputes a condition precedent to any inheritance or benefit under the estate and in the Banks Family Trust.

"... [T]he intent of [the testator] and the instructions are clear, explicit, and unambiguous.

"It is therefore ordered, adjudged, and decreed that this case is dismissed without prejudice. Any further issues shall be directed to the advisory committee. ..."

(Emphasis added; capitalization omitted.) Attached to the circuit court's order was a report of the advisory committee, which stated its final determination as follows: "The advisory committee, in one accord, have come to the opinion that Grant ... did in fact violate the express instructions of [the will] and unfortunately should be disinherited from the estate and the Banks Family Trust as laid out in [the will]" (Capitalization omitted.)

Although the circuit court referred to its December 3, 2024, order as a "final order," the order also clearly stated that it was dismissing the case "without prejudice."

"This Court has held that the words 'without prejudice,' when used in an order, 'mean that there is no decision of the controversy on its merits, and [that an order containing those words] leaves the whole subject in litigation as much open to another suit as if no suit had ever been brought.' Vacalis v.

Lowry, 279 Ala. 264, 267, 184 So. 2d 345, 347-48 (1966); see, also, Taylor v. Major Finance Co., 289 Ala. 458, 268 So. 2d 738 (1972)."

Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995).

Shannon filed a motion to amend the circuit court's December 3, 2024, order, arguing that "this matter is due to and should be dismissed with prejudice" (Emphasis added.) Shannon also asked the circuit court to amend the December 3, 2024, order to apparently include additional facts; to "take notice" that Grant had received sums in excess of the amount "otherwise due him for his statutory allowances and personal property exemption"; and to "recognize the findings of the advisory committee ... that, by initiating multiple judicial proceedings in violation of [the testator's] express instructions otherwise, as well as those other prior actions taken by counsel for and on behalf of Grant ..., ... Grant is no longer a beneficiary"

Grant's attorney also filed a motion to alter, amend, or vacate the circuit court's December 3, 2024, order. In his motion, Grant argued that the circuit court had "exclusive jurisdiction over the settlement of the estate"; that "a provision in a will which purports to restrict the exercise of judicial authority, take away a beneficiary's protectable liberty

interest, and violate Alabama's public policy is unenforceable as a matter of law"; that the circuit court could not "delegate its judicial role to an 'advisory committee'"; that the testator could not limit the circuit court's "judicial authority or obstruct Grant's constitutional rights"; that "the 'advisory committee' provision cannot be construed as a binding alternative dispute resolution"; and that Grant had not violated the in terrorem clause of the will.

On December 17, 2024, the circuit court entered an "amended final order," reciting the bases for the advisory committee's determination regarding the issue of forfeiture, stating that Grant had received distributions "in excess of the statutory amounts otherwise due to him[] and accordingly[] no longer has any further interest in the estate or the Banks Family Trust" (emphasis added) and that "the remaining, current beneficiary ..., Shannon, ha[d] consented to the final settlement of this matter without further hearing." Like its December 3, 2024, order, the circuit court's December 17, 2024, order still stated that the testator's will provided for a "mandated private mechanism for the resolution of any disputes involving his estate and the Banks Family Trust." However, in contrast to its December 3, 2024, order, the circuit court's December

17, 2024, order stated that the case was "dismissed with prejudice." (Emphasis added.) Grant appealed to this Court.

Analysis

On appeal, Grant argues, among other things, that the provision in the testator's will requiring that a private advisory committee exclusively resolve all disputes between beneficiaries is unenforceable as a matter of law because, he says, such a provision violates Alabama's public policy regarding the administration of wills. In particular, the will at issue here states:

"In the event of any claim or dispute by any beneficiary of, or party interested in, my estate or any trust established hereunder, their sole remedy shall be an appeal to my Advisory Committee.

"The decision of my Advisory Committee, whether requested by my Executor or Trustee, or otherwise, shall be final and not subject to appeal to or before any tribunal or court of law or equity; and, such decisions shall not be subject to further appeal or any court proceedings to the contrary"

Citing LaFlore v. Huggins, 392 So. 3d 500, 506 (Ala. 2023), this Court's memorandum in support of affirmance concludes that Grant failed to preserve his public-policy argument for appeal by raising that argument for the first time in the December 13, 2024, motion filed by his attorney seeking to alter, amend, or vacate the circuit court's December

3, 2024, "final order," purportedly pursuant to Rule 59, Ala. R. Civ. App. ("[W]hile litigants are permitted to raise new arguments in Rule 59(e) postjudgment motions, the trial court is not obligated to consider them.'").

I question the correctness of that conclusion, given that the circuit court's December 3, 2024, "final order" clearly stated that it was dismissing the case "without prejudice." As noted above, this Court's decision in Palughi held that "the words 'without prejudice[]' ... 'mean that there is no decision of the controversy on its merits, and [that an order containing those words] leaves the whole subject in litigation as much open to another suit as if no suit had ever been brought.'" 659 So. 2d at 113.

Moreover, although Grant's attorney referred to his December 13, 2024, motion as a motion to alter, amend, or vacate filed pursuant to Rule 59, I note that the Court of Civil Appeals has seemingly interpreted Palughi to mean that such motions are not generally true "postjudgment" motions pursuant to Rule 59. See, e.g., McDonald v. Across the Pond, Inc., 362 So. 3d 1256, 1258 (Ala. Civ. App. 2022)("On October 10, 2019, McDonald filed a purported postjudgment motion in the first district-

court action. See Walker Bros. Inv., Inc. v. City of Mobile, 252 So. 3d 57, 62 (Ala. 2017)('Motions filed pursuant to Rule 60(b)[, Ala. R. Civ. P.,] and Rule 59[, Ala. R. Civ. P.,] ... may be filed only in reference to a final judgment.');

Palughi, 659 So. 2d at 113 (stating that, when an action has been dismissed without prejudice, 'there is no final judgment upon which to base an appeal')." (emphasis added)).

This Court's memorandum cites no authority for applying the postjudgment-motion preservation principle from this Court's decision in Green Tree Acceptance, Inc. v. Blalock, 525 So. 2d 1366, 1369 (Ala. 1988), to an order dismissing a case without prejudice. Notably, by declining to consider Grant's public-policy argument raised in his December 13, 2024, motion, this Court appears to be giving at least some prejudicial effect to the circuit court's December 3, 2024, order when the plain language of the order itself indicates that the circuit court intended for it to have no prejudicial effect. Thus, in the absence of clear precedent for this Court's applying the preservation principle from Green Tree Acceptance under similar circumstances, I would decline to do so in this case.

Regardless, even after considering Grant's public-policy argument on appeal, I would not hold that every provision in a will creating a

private advisory committee for the purpose of facilitating dispute resolution is necessarily void ab initio as violative of Alabama's public policy. Rather, consistent with this Court's duty to protect the welfare of minors ex mero motu, see Hall, 280 Ala. at 280, 192 So. 2d at 731, I would reverse the circuit court's judgment in this case and remand this action for the circuit court to make an independent determination -- without any deference to the advisory committee -- regarding whether Grant should be regarded as having forfeited his share of his father's estate.

Although Grant is no longer a minor, it appears undisputed that all the conduct forming the basis for the advisory committee's forfeiture determination occurred while he was still a minor. In other words, it appears that the question presented regarding forfeiture involves an evaluation of a minor's conduct and the effect it should have on his share of an estate.

In a case involving a petition to remove a minor's guardian, this Court explained the inherent powers of circuit courts regarding estate property and minors:

"The power and duty of a court of equity in the matter of the removal of a guardian of the estate of a minor grows out of two equitable principles.

"In the supervision and administration of trust estates brought within its jurisdiction, the court, as incident to such jurisdiction, has authority to direct, or to remove trustees, as occasion demands.

"When such estate is the property of an infant, he becomes the ward of the court, and the safeguarding of his estate becomes an inherent function and duty of the court of chancery."

Ex parte Cabaniss, 235 Ala. 181, 183, 178 So. 1, 2 (1937)(emphasis added).

As explained above, after the circuit court entered an order staying its proceedings pending the advisory committee's report, Grant's guardian ad litem filed a motion asking the circuit court to reconsider that decision, strenuously arguing that the circuit court's surrendering the forfeiture determination to the advisory committee was not in Grant's best interests. I agree with the guardian ad litem's contentions in that regard.

Therefore, to the extent that the provisions of a will purport to deprive Alabama courts of jurisdiction to safeguard and protect the property interests of minors appearing before the courts, I have no difficulty in concluding that such provisions do indeed violate the public policy of this State. The question presented here may be an issue of first

impression for this Court, but the situation is not entirely without precedent, and a similar scenario was already addressed in New York in 1891.

In Bryant v. Thompson, 14 N.Y.S. 28 (Gen. Term 1891), the General Term of the Supreme Court of New York ("the General Term") considered an appeal from the Special Term of the Supreme Court of New York ("the Special Term"). In Bryant, the deceased testator's will had instructed the executors of his will to keep in trust \$100,000 for the benefit of the testator's only child, who was minor at the time of the testator's death. During certain proceedings concerning the will, the child's "special guardian" had "interposed an answer putting in issue the mental capacity of the testator to make the will" Id. at 28.

In a subsequent action involving conflicting claims to the \$100,000, the executors argued that the child, by contesting the will, had, under certain provisions of the will, "forfeited whatever bequest she would otherwise have received had not such contest been made by her" Id. at 29. The Special Term determined that the will contest had been "instituted and prosecuted by and in the name of the special guardian, and was not the contest of the daughter" Id. at 30.

On appeal to the General Term, the General Term affirmed the Special Term's decision but rejected its rationale, stating: "While it is true that the guardian, after his appointment, had substantially full control of all the proceedings in court, yet the contest, as carried on by him, was that of his ward, and not of his own." Id.

Regarding the forfeiture provisions of the will, the General Term stated: "This is not an unlawful provision The testator, having the right to say to whom his property shall be bequeathed and devised, had the right, also, to make it as a condition of any gift that the recipient thereof shall not contest the probate of the will." Id. Thus, the General Term reasoned:

"In such a case it was his obvious purpose to deprive the party of any benefits under the provisions in the will. It follows, therefore, as it seems to me, that the [child] failed to observe the condition upon which the bequest was made to her, and consequently that she cannot now, having been defeated in the probate, receive anything from the estate, unless the provision in question, when aimed at an infant, is to be deemed void, as being against public policy."

Id. (emphasis added). The General Term continued:

"It may well be said that the public has no concern with the question whether the will of a certain person shall be denied probate upon the ground of want of testamentary capacity, and that, consequently, a bequest conditioned upon a party of full age not raising such a question may be deemed

valid, and may be defeated by the subsequent act of the party in violation of the condition upon which the bequest was made. Any reasonable condition may be contained in a will, but where the condition is such as to subvert the course of judicial proceeding, and to deprive the court of the right and duty imposed upon it by law to institute, of its own motion, proper proceedings for the protection of the infant's rights, the question immediately becomes one of public policy, and brings into the discussion entirely new considerations."

Id. at 30-31 (emphasis added).

The General Term finally reasoned:

"Any provision in a will which, in its application, comes in conflict with the organic or statutory law of the state, by which it is made the duty of the courts to look after the rights of infants, irrespective of the fact whether they are of tender years or not, must be deemed to be illegal and void, as being against public policy. A testator cannot be permitted thus to obstruct, by any clause in his will, the necessary steps prescribed by law for the conduct of judicial proceedings in the case of infants, where the paramount duty of the court is to act in behalf of its wards, and for their best interests. No penalty or forfeiture can be worked against such a party who has done nothing more than to submit his rights to the adjudication of the courts. Any other rule, as applicable to infants, would work serious mischief. ... With adults the case is different. They may give away their rights; they may waive the provisions made for them; they are at liberty to enter upon a contest of a will or not, at their pleasure. But with infants the case is otherwise. They have no voice in the matter. The court acts for them, and it would be against the policy of the state to permit its action to be stayed or trammelled by a testamentary paper imposing a forfeiture upon its ward in case it should exercise its judicial functions in that particular instance."

Id. at 31 (emphasis added).

The public policy of Alabama that our courts are "under a continuing duty ... to exercise extraordinary precautions relative to the interest of the minor," see Citizens, 282 Ala. at 652, 213 So. 2d at 817, appears to be same as the substantive public policy of New York in 1891.

Therefore, like the General Term in Bryant, I conclude that

"[a] testator cannot be permitted thus to obstruct, by any clause in his will, the necessary steps prescribed by law for the conduct of judicial proceedings in the case of infants, where the paramount duty of the court is to act in behalf of its wards, and for their best interests."

14 N.Y.S. at 31.

Conclusion

In this case, Grant has argued that the relevant advisory-committee provisions of his father's will should be deemed void as against Alabama's public policy. This Court's memorandum concludes that Grant has failed to preserve that argument for appellate review by raising the argument for the first time in a postjudgment motion. Because the memorandum does not cite any precedent of this Court applying that particular preservation principle to a dismissal without prejudice, I cannot join the memorandum's conclusion in that regard.

Moreover, even if Grant's public-policy argument had not been preserved for this Court's review, this Court has a duty, ex mero motu, to safeguard and protect the interests of minors who are subject to the jurisdiction of Alabama courts. Consequently, although I would not hold that every provision in a will similar to the advisory-committee provisions at issue in this case necessarily violate the public policy of this State, I would hold that any such provisions in a will are void to the extent that they purport to divest the courts of this State of our inherent authority over the welfare and property interests of minors appearing before us.

Because it appears that the circuit court interpreted the provisions of the will at issue in this case to deprive it of authority to consider whether the conduct of a minor's representatives had worked a forfeiture of the minor's equal share in his father's estate, I would reverse the circuit court's judgment and remand this cause for the circuit court to make an independent determination regarding forfeiture -- without any deference to the advisory committee -- specifically, regarding the effect of conduct occurring while Grant was still a minor on the question of forfeiture.

"[Minors] have no voice in the matter. The court acts for them, and it would be against the policy of the state to permit its action to be stayed or trammelled by a testamentary paper imposing a forfeiture upon its ward in case it should exercise its judicial functions in that particular instance."

Bryant, 14 N.Y.S. at 31. Accordingly, I dissent from the Court's decision to affirm the circuit court's judgment in this case.

Stewart, C.J., concurs.

COOK, Justice (dissenting).

I respectfully dissent from the Court's decision to affirm the judgment below without an opinion. I write separately to emphasize that our affirmance should not be understood as endorsing the validity or enforceability of the testamentary provisions at issue. In my view, those provisions present important questions under Alabama law -- questions that give rise to serious concern and deserve careful judicial scrutiny.

Facts and Procedural History

As explained in detail in Justice Bryan's dissent, in his will, Raymond L. Banks named his sons, Shannon P. Banks and Grant A. Banks, as the principal beneficiaries of his estate, which is valued at over \$17 million. Raymond's will mandated the use of a private advisory committee for the resolution of any claim or dispute asserted by a beneficiary and stated that the decisions of that advisory committee would be immune from judicial review or appeal.

Raymond's will also contained an in terrorem clause providing that disinheritance would be triggered if any beneficiary, directly or indirectly, "contest[ed], dispute[d], or impede[d] ... the administration of [the] estate" or otherwise instituted "any proceedings, suit, or action for

the purpose of changing the effect of or in any way involving [the will]"

After Raymond died and probate proceedings began, Grant removed the administration of Raymond's estate to the Winston Circuit Court and then petitioned that court to compel Shannon, in his capacity as the personal representative of Raymond's estate, to file an inventory and accounting. In response, Shannon argued that Grant's petition for an inventory and accounting was one of several actions that triggered the will's in terrorem clause and violated the will's requirement that a private advisory committee exclusively resolve all disputes between beneficiaries.

A stay was then issued in all proceedings by the circuit court to allow a three-member, nonlawyer advisory committee to determine whether Grant had violated the will's in terrorem clause and, thus, had forfeited his interest in the estate. That advisory committee concluded that Grant "did in fact violate the express instructions of [the will] and unfortunately should be disinherited" The circuit court adopted the findings of the advisory committee and dismissed the estate administration with prejudice. Grant appealed. Today, this Court affirms

the circuit court's decision without an opinion.

Discussion

Estate administration in Alabama is a judicial function grounded in constitutional and statutory authority, and there are important public-policy reasons for this. Although Alabama law correctly recognizes that a testator's intent is the "polestar" of will construction, see, e.g., deGraaf v. Owen, 598 So. 2d 892, 895 (Ala. 1992), those same authorities make clear that testamentary intent controls only if it is not inconsistent with established law or public policy. Id. ("[T]he intention of the testator is always the polestar in the construction of wills, and ... the cardinal rule is to give that intention effect if it is not prohibited by law." (emphasis added)); see also Castleberry v. Stringer, 176 Ala. 250, 254, 57 So. 849, 850 (1912) ("'The fundamental and cardinal rule in the interpretation of wills is that the intention of the testator, if not inconsistent with some established rule of law or with public policy, must control'") (emphasis added; citation omitted)); Adams v. Jeffcoat, 252 Ala. 501, 503, 41 So. 2d 183, 184 (1949) ("'The cardinal rule in the construction of a will is to ascertain the intention of the testator and give it effect if not in contravention of some rule or principle of law.'" (emphasis added;

citation omitted)).

The Alabama Constitution and the Alabama Probate Code, § 43-8-1 et seq., Ala. Code 1975, clearly contemplate active judicial supervision over the administration of estates. Pursuant to Art. VI, § 144, Ala. Const. 2022, and § 12-13-1 probate courts in Alabama have original and exclusive jurisdiction over the probate of wills. See Caverno v. Webb, 239 Ala. 671, 674, 196 So. 723, 724 (1940) ("No court can take notice of or give effect to a will until probated in the court of probate, having general and exclusive jurisdiction for such purpose."). Section 12-13-1, Ala. Code 1975, also grants probate courts broad authority over the administration of estates -- authority that, as this Court has explained, encompasses

"the process of making an inventory of estate assets; collecting, safeguarding, and managing the estate; paying the lawful debts of the decedent, as well as the fees incurred in and the costs of administration; and distributing the remaining property to either the heirs at law in cases of intestacy or beneficiaries taking pursuant to the terms of a valid will in testate proceedings."

Segrest v. Segrest, 328 So. 3d 256, 266 (Ala. 2020).² There are important

²Although circuit courts may acquire jurisdiction over estate administrations through the removal procedures set forth in § 12-11-41, Ala. Code 1975, Alabama law recognizes that an estate administration -- whether conducted in a probate court or a circuit court -- remains a statutory proceeding governed by the same substantive legal framework.

public-policy reasons for requiring court involvement in the administration of estates; many of the parties are particularly vulnerable, may be unfamiliar with the legal system, and are often navigating the process in the midst of personal tragedy.

Further, the Legislature has expressly addressed the limited role that private dispute-resolution mechanisms may play in estate matters. Section 43-2-600 et seq., Ala. Code 1975, authorizes arbitration only with the consent of the parties, under court supervision, with disinterested arbitrators appointed by the probate court, and when subject to judicial review.

In stark contrast, the provisions in Raymond's will purported to unilaterally bind beneficiaries to a private tribunal, composed of potentially interested parties, operating without any meaningful procedural safeguards, and entirely insulated from judicial review -- even

See Guyton v. LaBossiere, 423 So. 2d 841, 843 (Ala. 1982) ("The probate of a will is governed by a comprehensive set of statutes ..."). Thus, once an estate administration is removed, the circuit court "exercises the jurisdiction thus acquired, ... observing always the substantive law provided for the security of parties and creditors." Anderson v. Steiner, 217 Ala. 85, 88, 115 So. 4, 6 (1927); see also Jemison v. Brasher, 202 Ala. 578, 579, 81 So. 80, 81 (1919) ("Taking jurisdiction, a court of equity will administer the estate and apply the substantive law regulating the conduct and settlement of administration in the probate court.").

when determining whether a beneficiary had forfeited his entire inheritance. I am doubtful that those provisions can be reconciled with Alabama's constitutional structure, probate statutes, and the public policy they embody. See Denson v. Alabama Fuel & Iron Co., 198 Ala. 383, 391, 73 So. 525, 529 (1916) ("In order to ascertain the public policy of a state in respect to any matter, the acts of the legislative department should primarily be looked to, because a legislative act, if constitutional, declares in terms the policy of the state.").³ Notably, the private dispute-

³Alabama law expressly reflects the critical role that courts play in (1) appointing and supervising the personal representative, see §§ 43-2-837 to 43-2-840, Ala. Code 1975 (imposing fiduciary duties on executors and authorizing courts to hold them accountable for breaches), (2) overseeing the preparation and approval of inventories and accountings, see § 12-13-1(b)(4), Ala. Code 1975 (granting probate courts general jurisdiction over "[t]he settlement of accounts of executors and administrators"), (3) ensuring that debts, taxes, and expenses are properly paid, see § 43-2-354, Ala. Code 1975 (providing that probate court is responsible for settling disputes over claims made against an estate), (4) resolving disputes among heirs, beneficiaries, and creditors, see § 12-13-1(b)(3) (granting probate courts general jurisdiction over "[a]ll controversies in relation to the right of executorship or of administration"), and (5) ultimately approving the final distribution of the estate, see § 43-2-502, Ala. Code 1975 (providing that probate court must approve the final settlement and authorize the distribution of estate assets).

The Alabama Uniform Trust Code ("the AUTC"), § 19-3B-101, et seq., Ala. Code 1975, further provides that the terms of a trust cannot override "the power of the court to take such action and exercise such

resolution provision in Raymond's will goes much further than a standard arbitration clause in insulating the advisory committee's decision from court oversight. The will provides that the advisory committee's decision "shall be final and not subject to appeal to or before any tribunal or court of law or equity." (Emphasis added.) That sweeping language seeks to bar all forms of judicial review -- including review by this Court.

The Alabama Probate Judges Association ("the Association"), as an amicus curiae, raises these same concerns. Specifically, the Association urges this Court to find the "testamentary provision, granting

jurisdiction as may be necessary in the interests of justice." § 19-3B-105(b)(12), Ala. Code 1975. In addition, the AUTC expressly preserves (1) the court's exclusive jurisdiction over proceedings "brought by a trustee or beneficiary concerning the administration of a trust," §§ 19-3B-105(b)(13), and 19-3B-203(a), Ala. Code 1975, and (2) the court's authority to compel a trustee to provide a judicial accounting, §§ 19-3B-105(b)(13) and 19-3B-205, Ala. Code 1975.

Although the AUTC does not apply to wills or testamentary provisions (except to the extent that a will creates a trust), see § 19-3B-102, Ala. Code 1975, wills and trusts are both expressions of donative intent and are governed by similar legal principles. The AUTC's restrictions on a settlor's ability to eliminate judicial oversight reflect broader public-policy interests in fairness, transparency, and access to the courts -- concerns that are equally relevant when interpreting and enforcing provisions in wills.

unreviewable authority to the Advisory Committee to resolve any disputes involving the construction of the [will], to be unenforceable as an impermissible effort to divest jurisdiction of courts over civil disputes in violation of the Alabama Constitution and the public policy of this state" The Association's amicus brief at 20.

We do not resolve that issue today, because this Court has determined that Grant's objections have not been properly preserved.⁴ Nevertheless, I respectfully dissent to voice my concern over the outsourcing of fundamental probate functions to a privately constituted

⁴I, on the other hand, believe that this issue has been preserved for appellate review. The record shows that Grant objected to the advisory committee's authority, particularly regarding the forfeiture determination, and that the circuit court considered and rejected those objections both before and after the matter was submitted to the committee. Furthermore, the circuit court's final order was entered sua sponte, without any motion seeking dismissal, any briefing addressing the advisory committee's findings, or any other adversarial presentation by the parties. Because Grant had no notice that the circuit court was preparing to enter a final, dispositive ruling adopting the advisory committee's determinations, he had no meaningful opportunity to object in advance. Applying waiver rules against Grant in these circumstances is inconsistent with the purposes underlying our preservation doctrine, which is to ensure that trial courts have an opportunity to consider legal arguments -- not to shield unrequested, unbriefed rulings from appellate review.

body operating beyond judicial review.⁵ I also firmly agree with the position expressed in Justice Bryan's dissent that Alabama courts retain a paramount and independent obligation to safeguard the interests of minors.⁶ That duty cannot be displaced or diminished by testamentary

⁵I also note my concern with the private advisory committee's application of the will's in terrorem clause against Grant. Although our Court has never squarely decided a challenge to the enforceability of in terrorem clauses, we have repeatedly held that -- if such provisions are enforceable in Alabama at all -- they must "be construed narrowly to avoid a forfeiture." Harrison v. Morrow, 977 So. 2d 457, 462 (Ala. 2007) (citing Kershaw v. Kershaw, 848 So. 2d 942, 955 (Ala. 2002)). This interpretive principle reflects the long-standing maxim that "'the law abhors a forfeiture'" and that a forfeiture provision will be enforced only when a party's conduct falls strictly and unequivocally within the clause's express terms. Kershaw, 848 So. 2d at 955 (quoting Claudia G. Catalano, Annotation, What Constitutes Contest or Attempt to Defeat Will Within Provision Thereof Forfeiting Share of Contesting Beneficiary, 3 A.L.R. 5th 590, § 2[a] (1992)).

Here, Shannon contends that Grant triggered the in terrorem clause in Raymond's will by merely requesting an accounting. Yet, a request for an accounting serves important public-policy purposes, including guarding against fraud. I am concerned that allowing such a request to trigger the application of an in terrorem clause would risk chilling legitimate oversight of fiduciaries. Moreover, I am not convinced that the text of the in terrorem clause in this case, when "construed narrowly," Harrison, 977 So. 2d at 462, would encompass a request for an accounting. In my view, extending the clause to reach that conduct would depart from the rule of strict construction embraced by our precedent. See id.

⁶As Justice Bryan notes, Grant was still a minor when the request for an accounting was filed in the circuit court. Thus, he lacked the legal

provisions purporting to delegate or constrain a court's authority. The administration of estates in Alabama remains, and should remain, a judicial responsibility -- one that includes the courts' special obligation to protect minors and their interests.

capacity to independently file pleadings or engage in binding legal action. See Rule 17(c), Ala. R. Civ. P. (requiring that minors be represented by a court-appointed guardian ad litem before any litigation may proceed). While I agree, as a general proposition, that a minor beneficiary is bound by the actions of his or her representative, I have serious reservations about imposing the severe penalty of forfeiture based on conduct that a minor beneficiary was legally incapable of taking on his or her own.