REL: March 27, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180148

Ex parte Huntingdon College

PETITION FOR WRIT OF MANDAMUS

(In re: Bellingrath-Morse Foundation Trust et al.

v.

Huntingdon College et al.)

(Mobile Probate Court, 2017-1609)

PER CURIAM.

Huntingdon College, a beneficiary of the Bellingrath-Morse Foundation Trust ("the Foundation"), petitions this

Court for a writ of mandamus directing the Mobile Probate Court to vacate its order denying Huntingdon's motion to dismiss an action filed by the Foundation's trustees, on behalf of the Foundation, and to enter an order dismissing the action for lack of jurisdiction. We grant the petition and issue the writ.

I. Facts

Walter D. Bellingrath, now deceased, established the Foundation, a charitable trust, by deed of trust dated February 1, 1950 ("the Trust Indenture"). Mr. Bellingrath contributed to the Foundation, both at its inception, and through his will and codicil, substantial property, including the Bellingrath Gardens ("the Gardens") and his stock in the Coca-Cola Bottling Company ("the Bottling Company stock"). Beneficiaries of the Foundation include three privately supported Christian colleges: Huntingdon College, Rhodes College, and Stillman College (hereinafter referred to collectively as "the beneficiaries").[1]

The Foundation's trustees and the beneficiaries have historically disagreed as to whether the Trust Indenture

[1]Rhodes College and Stillman College are not parties to this petition.

contemplated the subsidy of the Gardens by the Foundation and, if so, to what extent and with what limitations, if any.[2] On May 11, 1981, the trustees and the beneficiaries executed a settlement agreement ("the 1981 Agreement"), outlining an acceptable and workable framework for managing the Foundation and operating the Gardens; the 1981 Agreement was conditioned upon the sale of the Bottling Company stock, which occurred in 1982. The 1981 Agreement limited the payments or distributions by the Foundation for the support of the Gardens, including any reserves for the Gardens, to an amount not to exceed 20 percent of the Foundation's net income. The 1981 Agreement provided that, beginning with the fourth fiscal year after the sale of the Bottling Company stock, if in any succeeding year the percentage of net income of the Foundation needed for the

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[2]Paragraph four of the Trust Indenture provides:

> "The annual net income of the Foundation, after payment of the expenses of administering the trust, including payment of the cost of maintenance, repair, replacement and operation of said Gardens ... and after setting apart such part of the gross income, if any, as the Foundation Trustees deem necessary as a reserve fund for the operation and maintenance of said Gardens ... shall be used, paid and applied by the Foundation Trustees [to the beneficiaries in the amounts and percentages described in the Trust Indenture]."

support of the Gardens exceeded 15 percent, then, upon request of any beneficiary, the Foundation would seek instructions from the Mobile Circuit Court as to whether the Gardens should be kept open and, if so, what limitations should be placed upon the future use of the Foundation's net income for the support of the Gardens, if any.

Going forward, the trustees had difficulty operating the Gardens based on the agreed-upon cap in the 1981 Agreement, and they voted to increase the distribution amount to the Gardens. After extensive negotiations, the beneficiaries agreed not to invoke their right under the 1981 Agreement to request that the Foundation seek court instructions concerning whether the Gardens should be kept open. Rather, on May 6, 2003, the trustees and the beneficiaries executed a first amendment to the 1981 Agreement ("the 2003 Amendment").

The 2003 Amendment provided, in relevant part:

> "1. [Explaining that, commencing October 1, 2002, the payout method by the Foundation to the Gardens and to the beneficiaries would no longer be based on the net income of the Foundation. Rather, the payout method would be based on a percentage of a 12-quarter trailing average of the value of designated trust assets (sometimes referred to a unitrust or 'total-return' payout). The initial year's applicable rate was set at six percent].

"2. The Foundation shall not change the applicable rate to an amount lower than five percent (5%) at any time in the future without the unanimous consent of the Beneficiaries.

"3. The parties agree that if the Foundation chooses to increase payments made by the Foundation for the support of the Gardens, including any reserves for the Gardens, to as much as twenty percent (20%) of the distribution amount provided under paragraph 1 hereof, the Beneficiaries will not invoke their right [under the 1981 Agreement] to require the Foundation to seek court instructions, as provided in paragraph 2 of the [1981] Agreement. The Foundation shall not increase such payments for the support of the Gardens, including any reserves for the Gardens, above such twenty percent(20%) limitation at any time in the future without the unanimous consent of the Beneficiaries.

"....

"9. The Foundation agrees that except as provided in the [1981] Agreement and this [2003] Amendment, it will not expend funds for the benefit of the Gardens from the corpus of Foundation assets without the unanimous consent of the Beneficiaries.

"....

"11. The references in the [1981] Agreement and this [2003] Amendment to circumstances under which the parties may seek court instructions are not intended to exclude, limit or restrict any other remedies or rights of enforcement that may be available to the parties under applicable law. Nothing in [the 1981] Agreement or [the 2003] Amendment is intended to prevent any party from seeking court instructions with respect to the rights and duties of the parties.

> "12. Other than as specifically changed by this [2003] Amendment, all of the terms and conditions of the [1981] Agreement remain in effect and are not changed, and the rights of the parties hereto thereunder are not waived or relinquished."

(Emphasis added.)

On August 1, 2003, the Mobile Circuit Court entered a final judgment approving the execution and delivery of the 2003 Amendment and authorizing the performance by the trustees and the beneficiaries of their duties thereunder. The circuit court also approved, as an equitable deviation from the 1981 Agreement, the Foundation's payout method to a "total return" method.[3]

On August 9, 2017, the trustees, pursuant to § 19-3B-201, Ala. Code 1975,[4] filed in the Mobile Probate Court a petition for "emergency" instructions and declaratory relief with respect to the construction and administration of the

[3]See 19-3B-412(b), Ala. Code 1975 (providing that "[t]he court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration"). In this case, the parties submitted to the circuit court evidence indicating that the Foundation's then current payout method did not provide sufficient funds to support both the Gardens and the beneficiaries as intended by Mr. Bellingrath.

[4]Section 19-3B-201 addresses the role of the court in the administration of a trust.

Foundation.[5] The trustees specifically asserted that their ability to maintain the Gardens had been substantially impaired by the funding restraints of the 1981 Agreement and the 2003 Amendment, and they requested, among other things, emergency instructions as to how the "existing funding agreement should be revised."[6] The trustees sought, among other things, court approval (1) to fund immediately from the corpus of the Foundation and to continuously replenish, in the trustee's discretion, a $1,000,000 reserve for the repair, capital improvement, and/or emergency needs of the Gardens; and (2) to distribute to the Gardens, in the trustees' sole discretion, such amount of the Foundation's income they deemed necessary for the maintenance, repair, and operation of the Gardens. The beneficiaries moved the probate court to dismiss the trustees' action for want of jurisdiction. The beneficiaries argued that the trustees' action was a

[5]The designation of the pleading as an "emergency" appears to be self-serving; the trustees never demonstrated there existed an imminent, immediate, or irreparable threat to the Gardens other than by their actions.

[6]The trustees also sought judicial review of the beneficiaries' courses to determine whether they complied with the trust's religious-instruction requirement. The trustees asked the court to suspend the beneficiaries' funding if they did not.

collateral attack on the judgment approving the 2003 Amendment and that a collateral attack on a prior judgment can be brought only in the court in which the prior judgment was rendered. The probate court thereafter entered an order identifying 11 specific questions of law it intended to rule upon after consideration of the beneficiaries' motion to dismiss. The trustees moved for a partial summary judgment on those questions of law.[7]

On October 5, 2018, the probate court entered an order concluding that it had jurisdiction over the trustees' action and purporting to render a decision in favor of the trustees on their motion for a partial summary judgment. The probate court declared, among other things, that the trustees had discretion under the Trust Indenture to establish a reserve and to maintain it on an ongoing basis, subject to the standards of the Trust Indenture. The probate court also declared that the trustees had the discretion under the Trust Indenture to distribute such portion of the Foundation funds

[7]Huntingdon asserted a counterclaim against the trustees alleging breach of fiduciary duty and breach of the duty of loyalty; it also sought an accounting. Huntingdon also asserted a counterclaim against the Foundation for its alleged breach of the 2003 Amendment. Those counterclaims remain pending in the probate court.

they deemed necessary for the operation of the Gardens. In other words, the probate court, by declaring that the trustees were no longer bound by the 2003 Amendment capping the funding of the Gardens, effectively rendered void the 2003 final judgment of the Mobile Circuit Court. Huntingdon petitioned this Court for a writ of mandamus requesting, among other things, that this Court direct the Mobile Probate Court to dismiss the trustees' action for lack of jurisdiction.

II. Standard of Review

> "Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Flint Constr. Co., 775 So. 2d 805 (Ala. 2000).

III. Analysis

It is undisputed that the Mobile Probate Court has concurrent jurisdiction with the Mobile Circuit Court in any proceeding involving a testamentary or inter vivos trust. See

§ 19-3B-203(b), Ala. Code 1975 (noting that "[a] probate court granted statutory equitable jurisdiction has concurrent jurisdiction with the circuit court in any proceeding involving a testamentary or inter vivos trust"). It is also undisputed that § 19-3B-201(b), Ala. Code 1975, provides that "[a] trust is not subject to continuing judicial supervision unless ordered by the court." This case, however, does not involve an issue concerning the probate court's concurrent jurisdiction, nor does it involve whether the circuit court retained continuing jurisdiction over the 2003 Amendment. Rather, the issue presented is whether the probate court had jurisdiction to alter, amend, or, in this case, nullify the circuit court's final judgment under which the parties had been operating up until the time the trustees filed the underlying proceeding.[8] We conclude that it did not.

As indicated, the 1981 Agreement was a negotiated arm's-length agreement between the parties to it, all of whom were

[8]Huntingdon maintains that, rather than returning to the circuit court that had exercised jurisdiction over the 1981 Agreement and the 2003 Amendment, the trustees filed their action in the probate court where one of their lead counsel had been appointed in 2001 by the Mobile probate judge as a part-time judge and was continuing to serve in that capacity when the underlying action was filed. Huntingdon moved the Mobile probate judge to recuse himself; he did not.

represented by counsel; it allowed an initial and limited subsidy to the Gardens of up to 20 percent of the trust income for four years, after which the subsidy was capped at 15 percent, and provided that any reserve funds would come from that distribution. According to Huntingdon, the trustees' inability to operate under the agreed-upon cap resulted from the trustees' failure to properly maintain the Gardens, resulting in annual deficits.[9] In lieu of litigating whether the Gardens should be kept open, the beneficiaries agreed that they would not invoke their right under the 1981 Agreement to require the Foundation to seek court instructions. Rather, the parties executed the 2003 Amendment in which they agreed that the Foundation shall not increase any payments, including reserves, above 20 percent at any time in the future without the unanimous consent of the beneficiaries. The trustees also agreed that they would not expend funds for the benefit of the

[9]Huntingdon specifically asserts that the trustees' inability to properly maintain the Gardens under the agreed-upon cap was the result of the Gardens having been hugely expanded and altered, despite Mr. Bellingrath's stated intent in the Trust Indenture that "[t]he operation of the Gardens shall be continued by the Foundation Trustees in substantially the same way as they are being operated at this time[,] ... bearing in mind the purposes of the trust and the charitable, religious and educational uses to which the income of the trust estate is to be applied."

Gardens from the corpus of Foundation assets without the unanimous consent of the beneficiaries. Again, this was an arm's-length negotiation between parties, all of whom were represented by counsel. It is undisputed that the Trust Indenture establishing the Foundation grants the trustees discretion to compromise or settle "on such terms as may seem advisable to them in their discretion." Based partly on this discretion and the fundamental fairness of the terms of the 2003 Amendment to all the parties, the circuit court entered a final judgment approving the 2003 Amendment and the parties' undertakings thereunder; the circuit court incorporated the 2003 Amendment in its final judgment. In approving the 2003 Amendment, the circuit court necessarily determined that the 2003 Amendment was consistent with the Trust Indenture. In other words, the parties entered into a binding, court-approved, settlement agreement expressed in an amendment to the Trust Indenture. There appears to be no dispute on this point. Although the trustees maintain that their petition for emergency instructions filed in the probate court seeks a declaration as to the purposes of the Foundation and the trustees' proper responsibilities relating to those purposes,

there can be no rational dispute that the trustees' ultimate goal in filing their petition was to attack the 2003 Amendment and the final judgment of the Mobile Circuit Court approving the 2003 Amendment--in an attempt to substantially alter the agreed-upon and accepted limitation on funds available for the Gardens. As indicated, the trustees expressly asserted in their petition that their ability to financially support the Gardens had been substantially impaired by the restraints of the 1981 Agreement and the 2003 Amendment, and they requested, among other things, emergency instructions as to how the "existing funding agreement should be revised." There is no question that their request was a collateral attack on the judgment approving the 2003 Amendment.

Because the trustees sought to revise the circuit court's judgment approving the terms of the 2003 Amendment, they were required to file in the circuit court a motion for relief from that judgment pursuant to Rule 60(b), Ala. R. Civ. P. See Hardy v. Johnson, 245 So. 3d 617, 621 (Ala Civ. App. 2017)(noting that, generally, a motion filed pursuant to Rule 60(b)(5), Ala. R. Civ. P., "must be directed to the judgment in the case in which the motion was filed"); see also EB

Invs., L.L.C. v. Atlantis Dev., Inc., 930 So. 2d 502, 508 (Ala. 2005)(noting that the "typical approach for attacking a judgment under Rule 60(b) is by filing a motion in the court that rendered the judgment"). Rather than filing a Rule 60(b) motion for relief from the judgment in the circuit court, the trustees initiated an entirely new proceeding in the probate court seeking review of the entirety of the Foundation, its operations, and its distributions, as if the previously negotiated 1981 Agreement and 2003 Amendment were of no effect. This action was procedurally improper as a matter of law.

IV. Conclusion

Based on the foregoing, the probate court lacked jurisdiction to modify the Mobile Circuit Court's final judgment approving the 2003 Amendment. We therefore grant the petition for a writ of mandamus and direct the probate court to dismiss the trustees' action.

PETITION GRANTED; WRIT ISSUED.

Sellers, Mendheim, and Stewart, JJ., concur.

Bolin and Bryan, JJ., concur specially.

Parker, C.J., and Shaw, J., dissent.

Mitchell, J., recuses himself.

BOLIN, Justice (concurring specially).

I agree entirely with the majority opinion. I write to explain why the Mobile Circuit Court lacks general superintendence over the Mobile Probate Court in the case at bar and, therefore, why this Court has jurisdiction to address the mandamus petition before us.

Act No. 91-131, Ala. Acts 1991 (Reg. Session), applicable to Mobile County, amends Act No. 974, Ala. Acts 1961, to read, in pertinent part, as follows:

> "'Section 1. That the Probate Courts in all counties of this State which now have or may hereafter have a population of over 300,000 and less than 500,000, according to the last or any subsequent Federal census, shall have general and equity jurisdiction concurrent with that of the Circuit Courts of this State, in the administration of estates of deceased persons, minors, the developmentally disabled, insane, incapacitated, protected or incompetent persons, or the like, and testamentary trust estates. The jurisdiction granted by this act shall be conferred without the necessity of the same being invoked in any estate proceeding and may be exercised at the discretion of the Court.
>
> "'Section 2. (a) That the Judges of such Probate Courts shall have the same powers and authority which Judges of the Circuit Courts of this State have in connection with the administration of such estates in the Circuit Courts, including, but not limited to, the authority to (i) grant private sales of property, (ii) determine title and/or ownership of assets, real, personal or mixed, (iii)

authorize, order and direct paternity testing where there is a question concerning a parent/child relationship, and (iv) determine hardship.

"'....

"'Section 3. That all laws of pleading and practice, and evidence, and rules of court, including the Alabama Rules of Civil Procedure, and all laws relating to the testamentary trusts and testamentary trustees, and all laws relating to the mode of obtaining evidence by oral examination or by depositions, and of compelling the attendance of witnesses, and of enforcing orders, decrees and judgments, including money judgments, now applicable in the Circuit Courts shall apply to the administration of such estates in said Probate Courts, in so far as the same can be made appropriate.

"'Section 4. That in the administration of said estates, such Probate Courts may proceed according to the rules and practice of the Circuit Courts of this State, without regard to the statutory requirements provided for the administration of such estates in the Probate Courts of this State, but nothing herein is intended to prohibit such Probate Courts from proceeding in accordance with the statutes relating to the administration of such estates in the Probate Courts of this State generally.

"'Section 5. That appeals from the orders, judgments and decrees of such Probate Courts, relating to the administration of such estates, including decrees on partial settlements, lie to the Supreme Court with the time period prescribed in the Alabama Rules of Appellate Procedure from the entry of the order, judgment or decree. Such appeals shall be made in accordance with said appellate rules.

> "'Section 6. The Probate Judges of such Courts shall perform all the duties now required by law of the Judges of the Circuit Courts of this State, in reference to the administration of such estates and shall be entitled to assess and collect the costs of court, charges, fees and commissions as are authorized by law to be assessed and collected.
>
> "'Section 7. The jurisdiction conferred by this act on the Probate Courts, Probate Judges, and Chief Clerks of such counties is intended to be cumulative only, and it is not intended hereby to in any manner limit or restrict the jurisdiction of the Circuit Courts or the Probate Courts of such counties. Nothing herein shall be construed as prohibiting the removal of any such estates from the Probate Court in such counties to the Circuit Court as is provided by law.
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> "'Section 8. It is the primary intention of this act to expedite and facilitate the administration of such estates in counties of over 300,000 and less than 500,000 population and should any part or parts of this act be declared unconstitutional it is not intended that it shall affect the remainder of the act.'"

(Emphasis added.)

Act No. 91-131, a local act, applies to cases originating in the Mobile Probate Court. The act grants the Mobile Probate Court concurrent jurisdiction with the Mobile Circuit Court in the administration of estates, providing "general and equity jurisdiction concurrent with that of the Circuit Courts of this State, in the administration of estates of deceased persons, minors, the developmentally disabled, insane,

incapacitated, protected or incompetent persons, or the like, and testamentary trust estates." Therefore, the act grants the Mobile Probate Court broader jurisdiction in estate cases than most of the probate courts of this state have.

The act confers upon the Mobile Probate Court general and equity jurisdiction over certain estates concurrent with the Mobile Circuit Court and provides for pleading and procedure in matters involving such estates, the enforcement of orders and judgments in such matters, and appeals of the same. The primary purpose of the act is to expedite and facilitate the administration of such estates. To achieve this purpose, the act confers the same powers and authority on the Mobile probate judge as those held by the Mobile circuit judge.

I realize that § 12-11-30(4), Ala. Code 1975, gives a circuit court "a general superintendence over all district courts, municipal courts, and probate courts." However, the legislature never intended for a circuit court to have "a general superintendence" over a court that exercises concurrent jurisdiction, such as the Mobile Probate Court. Obviously, one circuit court does not have a general superintendence over another circuit court.

Section 140(b), Ala. Const. 1901, states that this Court "shall have original jurisdiction ... to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction." Section 12-2-7(3), Ala. Code 1975, mirrors § 140, stating that "[t]he Supreme Court shall have authority ... [t]o issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of courts of inferior jurisdiction." (Emphasis added.)

By way of analogy to "general superintendence and control" is the mandamus jurisdiction of the Court of Criminal Appeals and the Court of Civil Appeals, as to which § 12-3-11, Ala Code 1975, provides:

> "Each of the courts of appeals shall have and exercise original jurisdiction in the issuance and determination of writs of quo warranto and mandamus in relation to matters in which said court has appellate jurisdiction. Each court shall have authority to grant injunctions and issue writs of habeas corpus and such other remedial and original writs as are necessary to give it a general superintendence and control of jurisdiction inferior to it and in matters over which it has exclusive appellate jurisdiction and to punish for contempts by the infliction of a fine not exceeding $100.00 and imprisonment not exceeding 10 days, or both, and

> to exercise such other powers as may be given to such court by law."

(Emphasis added.)

I also note that Section 1 of Act No. 91-131, amending § 5 of Act No. 974, Ala. Acts 1961, provides that appeals from the orders, judgments, and decrees of the Mobile Probate Court lie to this Court. It does not specify final or interlocutory orders, so I contend that the legislature intended for this Court, in conjunction with our authority to issue writs to inferior courts within our appellate jurisdiction, to be the proper court to entertain a petition for the writ of mandamus, the same as provided above for the intermediate courts of appeal.

I note that allowing the circuit court to address mandamus petitions in cases where the appeal lies to this Court could easily result in inconsistent decisions, or prolonged litigation by the addition of a potential second petition for mandamus relief from this Court directed to the circuit court. With regard to inconsistent decisions, a circuit court could deny a petition for mandamus relief -- necessitating a trial -- that could later receive the exact opposite decision on a later appeal to this Court. Conversely,

the circuit court could grant mandamus relief that could subsequently be negated by another petition for mandamus relief to this Court, or on an appeal of the final probate-court order or judgment to this Court. Such absurd results would either negate, or at least significantly impede, the stated purpose of the local act "to expedite and facilitate the administration of such estates in counties" such as Mobile County.

I note also that this Court has recognized the interplay between Act No. 91-131 and this Court's jurisdiction over probate-court appeals in §§ 12-22-20 and -21, Ala. Code 1975. In Russell v. Russell, 758 So. 2d 533 (Ala. 1999),[10] this Court held that it was the proper appellate court for a widow's appeal from the Mobile Probate Court's dismissal of her petition to declare void her husband's transfer of assets to an inter vivos trust. The widow argued that Act No. 91-131 did not deprive the circuit court of jurisdiction over appeals from the probate court under § 12-22-20. This Court stated:

[10]Russell was overruled on other grounds by Oliver v. Shealey, 67 So. 3d 73 (Ala. 2011), regarding correcting the notice of appeal, holding that if the notice of appeal names the incorrect appellate court, the court to which the appeal has been wrongly taken shall treat that designation as a clerical mistake and shall correct the notice of appeal.

> "Mrs. Russell's argument, however, fails to recognize that § 12-22-20, which states that appeals from the probate court may be taken to the circuit court or to this Court, must be read in conjunction with Ala. Code 1975, § 12-22-21. Under that section, appeals can be taken to the circuit court from seven enumerated kinds of judgments or orders of the probate court. Alabama courts have held that, unless the judgment or order to be appealed from is included within that list, or unless there is other statutory authority specifically allowing an appeal to the circuit court or providing that an appeal lies to the Court of Civil Appeals, appeals from the probate court lie to this Court. See, e.g., Franks v. Norfolk S. Ry. Co., 679 So. 2d 214 (Ala. 1996); SC Realty, Inc. v. Jefferson County, 638 So. 2d 1343 (Ala. Civ. App. 1993); Hicks v. Enlow, 495 So. 2d 691 (Ala. Civ. App. 1986). Mrs. Russell appealed from the probate court's dismissal of her petition to declare void Mr. Russell's transfer of assets to his inter vivos trust and to have those assets included within Mr. Russell's probate estate. Because an appeal to the circuit court from such an order is not authorized by § 12-22-21, or by any other statute, the circuit court correctly concluded that Mrs. Russell should have filed her appeal with this Court."

Russell, 758 So. 2d at 536-37 (footnote omitted). Nevertheless, I believe the legislature intended for Act No. 91-131 to limit a litigant to an appeal to this Court as such appeals "lie to the Supreme Court." I recognize that the amendment of § 7 in the act relates to the probate court's and the circuit court's concurrent jurisdiction in the removal of the administration of estates from the probate court to the

circuit court under § 12-11-41, Ala. Code 1975. "Removal" of an estate, however, pursuant to § 12-11-41, implies no "general superintendence" of the circuit court over the probate court. Rather, it is a long-standing procedure to facilitate allowing probate matters in counties having no local act, and hence no equity jurisdiction, to be removed to the circuit when "such estate can be bettered administered in the circuit court than in the probate court." Put another way, it is a vehicle to get an estate before a tribunal having the same jurisdiction and remedies given to the Mobile Probate Court by the local act.

I recognize this Court has twice addressed appellate jurisdiction involving a similar local act providing equity jurisdiction to the Jefferson Probate Court. In Schroeder v. McWhite, 569 So. 2d 316 (Ala. 1990), this Court affirmed the Jefferson Circuit Court's order dismissing a party's appeal from an order of the probate court. 569 So. 2d at 318. By a local act very similar to Act No. 91-131, the legislature granted the Jefferson Probate Court jurisdiction concurrent with the circuit court in the administration of decedents' estates. See Act No. 1144, Ala. Acts 1971. In Schroeder, a

party appealed from the probate court's denial of her motion for relief from its order requiring her to return substantial amounts of assets to the personal representative of a decedent's estate. 569 So. 2d at 318. This Court stated that the party's appeal would not lie to the circuit court, "for the obvious reason that the ruling on her motion was by the probate court acting in its exercise of jurisdiction concurrent with that of the circuit court." 569 So. 2d at 318-19. In Jett v. Carter, 758 So. 2d 526 (Ala. 1999), a case that involved the probate court's determination that a will was invalid, this Court overruled Schroeder. I note that the probate court's order stated that its "equity powers" had been invoked; however, it only declared a will to be invalid. That is a statutory power involving no exercise of equity jurisdiction that any court, including any probate court, can perform and is certainly not limited to those probate courts where the legislature requires certain probate judges to be learned in the law.[11] Accordingly, as Justice Cook noted in

[11]"'It is a tempting subject to trace the history of the probate of wills and the administration of the personal estates of decedents, from the time it was held to be a matter of exclusive ecclesiastical prerogative, down to the present. It is sufficient to say that through it all, to the present hour, it has been the almost uniform rule among

his special writing in Jett, and I maintain correctly so, there was no need or necessity for the Court to overrule Schroeder. That is, the Jefferson Probate Court was not exercising any concurrent jurisdiction with the circuit court in the proceeding before it in Jett.

Lastly, I sharply criticize the Chief Justice's dissent's lark in grasping at 150 years of inapposite caselaw and a

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jurisdictions who make the common-law of England the basis of their judicial system, to have a distinct tribunal for the establishment of wills and the administration of the estate of persons dying either with or without wills. These tribunals have been variously called Prerogative Courts, Probate Courts, Surrogates, Orphans' Court, etc.'" Ex parte Kelly, 243 Ala. 184, 194, 8 So. 2d 855, 864 (1942)(Thomas, J., dissenting in part and quoting Ferris v. Highley, 87 U.S.(20 Wall.) 375 (1874)). As is present in the case at bar, certain probate judges who are required by local act to be attorneys are granted expanded jurisdiction and may invoke and use equity jurisdiction commensurate and concurrent with the circuit court to fully and completely administer and settle a decedent's estate. Generally, equitable powers and remedies are distinguished from "legal" ones. Legal remedies typically involve monetary damages while equitable relief, particularly with regard to estates, typically refers to matters such as those set out in § 1, amending § 2(a), in Act No. 91-131, e.g., the authority to "(i) grant private sales of property, (ii) determine title and/or ownership of assets, real, personal or mixed," as well as matters of injunctions, specific performance, or vacatur. The expanded jurisdiction of those probate courts that may invoke equitable remedies ameliorates the strictures of courts at law, allowing for a full administration of both real- and personal-property rights of estates by the court most familiar with probating an estate.

blind construction of statutes to reach the conclusions (1) to overrule caselaw no party has asked this Court to overrule and (2) to come to a conclusion that thwarts the legislative intent of the Mobile County local act to expedite and facilitate the administration of estates in the probate court.

BRYAN, Justice (concurring specially).

I concur in the majority opinion's conclusion that the Mobile Probate Court ("the probate court") lacked jurisdiction to modify the final judgment of the Mobile Circuit Court, which approved the 2003 amendment to the 1981 agreement reached between the trustees of the Bellingrath-Morse Foundation Trust and Huntingdon College, Rhodes College, and Stillman College, as beneficiaries of the Bellingrath-Morse Foundation Trust. I write specially, however, to express my agreement with the spirit of the probate court's October 5, 2018, order, at least insofar as it purported to issue a decision consistent with Walter D. Bellingrath's intent in establishing the Bellingrath-Morse Foundation Trust. "[T]he intent and purpose of the settlor is the law of the trust." Ingalls v. Ingalls, 256 Ala. 321, 328, 54 So. 2d 296, 301 (1951).

PARKER, Chief Justice (dissenting).

Huntingdon College seeks mandamus review of interlocutory decisions of the Mobile Probate Court. Because the Mobile Circuit Court, not this Court, has jurisdiction to review those decisions, I would dismiss the petition.

I. The jurisdictional bar of this Court's direct writ review of decisions of tribunals inferior to the circuit court

For a century and a half, this Court has consistently held that it will not review, on a petition for a writ of mandamus, a decision of a tribunal inferior to a circuit court if the circuit court has jurisdiction to review that decision.[12] In other words, if review is available in a circuit court, a litigant may not come directly to this Court. We have based this procedural bar on constitutional and

[12]See Ex parte Tarlton, 2 Ala. 35 (1841); Ex parte Russell, 29 Ala. 717 (1857); Ex parte Henderson, 43 Ala. 392, 397 (1869); Ex parte Pearson, 76 Ala. 521, 522-23 (1884); Ramagnano v. Crook, 88 Ala. 450, 7 So. 247 (1890); Ex parte Town of Roanoke, 117 Ala. 547, 23 So. 524 (1898); State v. Hewlett, 124 Ala. 471, 27 So. 18 (1899); Christopher v. Stewart, 133 Ala. 348, 32 So. 11 (1902); In re Giles, 133 Ala. 211, 32 So. 167 (1902); Ex parte Barger, 243 Ala. 627, 11 So. 2d 359 (1942); Denson v. Board of Trs. of Univ. of Alabama, 247 Ala. 257, 23 So. 2d 714 (1945); Ex parte Price, 252 Ala. 517, 41 So. 2d 180 (1949); Richey v. Butler, 255 Ala. 150, 157, 50 So. 2d 441, 447 (1951); Ex parte Morgan, 259 Ala. 649, 67 So. 2d 889 (1953); Ex parte Tubbs, 585 So. 2d 1301 (Ala. 1991).

statutory language, the substance of which is now contained in the following provisions.

> "(b) The supreme court shall have original jurisdiction ... to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction ....
>
> "(c) The supreme court shall have such appellate jurisdiction as may be provided by law."

Art. VI, § 140, Ala. Const. 1901 (emphasis added).

> "The Supreme Court shall have authority:
>
> "....
>
> "(2) To exercise original jurisdiction in the issue and determination of writs of ... mandamus in relation to matters in which no other court has jurisdiction.
>
> "(3) To issue ... remedial and original writs as are necessary to give to it a general superintendence and control of courts of inferior jurisdiction."

§ 12-2-7, Ala. Code 1975 (emphasis added).[13] As explained by

[13]See Ex parte Tarlton, 2 Ala. 35, 36 (1841) (relying on prior constitutional provision); Ex parte Russell, 29 Ala. 717, 718 (1857) (same); Ex parte Henderson, 43 Ala. 392, 397 (1869) (same); In re Giles, 133 Ala. 211, 32 So. 167 (1902) (same); Ex Parte Pearson, 76 Ala. 521, 523 (1884) (relying on prior constitutional provision and statute); Richey v. Butler, 255 Ala. 150, 157, 50 So. 2d 441, 447 (1951) (same); Ex parte Morgan, 259 Ala. 649, 651, 67 So. 2d 889, 890 (1953) (same); Ex parte Tubbs, 585 So. 2d 1301, 1302 (Ala. 1991) (same); State v. Hewlett, 124 Ala. 471, 474, 27 So. 18, 19 (1899)

this Court 150 years ago: "The necessity here spoken of, can not be said to arise, if there is any other court or judge in the State, who has authority to issue said writs." Ex parte Henderson, 43 Ala. 392, 397 (1869). Moreover, we have stated that this procedural bar is jurisdictional.[14] And we have specifically applied it to petitions for mandamus review of probate-court decisions.[15]

Thus, the crucial question in this case is whether the circuit court has jurisdiction to review the probate court's decisions challenged by Huntingdon College. Circuit courts have "general superintendence over ... probate courts." § 12-11-30(4), Ala. Code 1975; see Ross v. Rosen-Rager, 67 So. 3d

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(relying on prior statute); Christopher v. Stewart, 133 Ala. 348, 352, 32 So. 11, 13 (1902) (same).

[14]Ex parte Pearson, 76 Ala. 521, 522-23 (1884); Ramagnano v. Crook, 88 Ala. 450, 7 So. 247 (1890); In re Giles, 133 Ala. 211, 32 So. 167 (1902); Ex parte Barger, 243 Ala. 627, 11 So. 2d 359 (1942); Ex parte Tubbs, 585 So. 2d 1301 (Ala. 1991).

[15]See Henderson, 43 Ala. at 397; Ex parte Pearson, 76 Ala. 521, 522-23 (1884); Ramagnano v. Crook, 88 Ala. 450, 7 So. 247 (1890); Ex parte Town of Roanoke, 117 Ala. 547, 23 So. 524 (1898); Christopher v. Stewart, 133 Ala. 348, 32 So. 11 (1902); Denson v. Board of Trs. of Univ. of Alabama, 247 Ala. 257, 23 So. 2d 714 (1945); Ex parte Price, 252 Ala. 517, 41 So. 2d 180 (1949); Jerome A. Hoffman, Alabama Appellate Courts: Jurisdiction in Civil Cases, 46 Ala. L. Rev. 843, 911-12, 920-22 (1995).

29, 38 (Ala. 2010). "'Encompassed in this superintendence is the power to review certain judgments and orders of the probate court, either through direct appeal or by petition for an extraordinary writ.'" Ross, 67 So. 3d at 38 (quoting Franks v. Norfolk S. Ry., 679 So. 2d 214, 216 (Ala. 1996)); see Art. VI, § 142(b), Ala. Const. 1901 ("[The circuit court] shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers ....").

Probate-court decisions that can be appealed to circuit courts are limited to seven categories of decisions listed in § 12-22-21, Ala. Code 1975. Russell v. Russell, 758 So. 2d 533, 536-37 (Ala. 1999), overruled on other grounds, Oliver v. Shealey, 67 So. 3d 73 (Ala. 2011); Jett v. Carter, 758 So. 2d 526, 528-30 (Ala. 1999); Ed R. Haden, Alabama Appellate Practice § 6.09[1] (2019). Probate-court decisions are also appealable to circuit courts under certain subject-matter-specific statutes. See Russell, 758 So. 2d at 537; Haden, supra; Jerome A. Hoffman, Alabama Appellate Courts: Jurisdiction in Civil Cases, 46 Ala. L. Rev. 843, 990-91 (1995). Here, the probate court's decisions do not fit within the categories in § 12-22-21 and are not covered by any

subject-specific statute.

"'Orders as to which no statute grants appellate jurisdiction are reviewed on petitions for writ of certiorari, mandamus, or prohibition.'" Ross, 67 So. 3d at 38 (quoting Franks, 679 So. 2d at 216); see also Haden, supra, § 6.09[4]; Hoffman, supra, at 992-94. Because the probate court's decisions here are not within the circuit court's appeal jurisdiction, then, in the absence of any contrary constitutional or statutory provision, the orders necessarily come within the circuit court's "general superintendence" jurisdiction. See Ross, 67 So. 3d at 38. Therefore, the circuit court had jurisdiction to review these decisions on a petition for a writ; in this case, mandamus.

II. Ex parte Jim Walter Resources, Inc.

Seven years ago, this Court accepted direct mandamus review of a probate-court decision based on reasoning that tacitly conflicted with the constitutional and statutory analysis outlined above. In Ex parte Jim Walter Resources, Inc., 91 So. 3d 50 (Ala. 2012), the petitioner requested mandamus review by this Court of a probate court's refusal to record certain mortgages without payment of recording taxes.

In the briefs (contained in this Court's record in Jim Walter), the petitioner argued that this Court had jurisdiction, and the respondent conceded this point. Both parties failed to mention the long-standing jurisdictional bar discussed above. In the opinion, we discussed our jurisdiction as follows:

> "[T]his Court has jurisdiction to review a petition for a writ of mandamus in matters as to which this Court has appellate jurisdiction. See § 12-3-11, Ala. Code 1975 ('Each of the courts of appeals shall have and exercise original jurisdiction in the issuance and determination of writs of quo warranto and mandamus in relation to matters in which said court has appellate jurisdiction.'). A probate court's application of the mortgage-recordation-tax statute is within this Court's jurisdiction because the circuit court's appellate jurisdiction over probate matters is limited and does not include the taxing issue involved in this case. See § 12-22-21, Ala. Code 1975 (listing probate-court matters over which the circuit court has appellate jurisdiction); Oliver v. Shealey, 67 So. 3d 73, 74 (Ala. 2011) (holding that appeals from probate court are heard first by this Court if the subject matter is not proper for the appeal to be heard in circuit court and noting that '[a] circuit court's appellate jurisdiction over an order of a probate court is confined to seven circumstances enumerated in § 12-22-21')."

91 So. 3d at 52. In essence, this Court held that it had mandamus jurisdiction based on the following chain of premises: (1) this Court has mandamus jurisdiction over lower-

court cases over which this Court has appeal jurisdiction; (2) this Court has appeal jurisdiction over appealable decisions over which no other court has appeal jurisdiction (implied premise); (3) circuit courts lack appeal jurisdiction over the recordation-tax matter involved in Jim Walter; and (4) circuit courts lack mandamus jurisdiction over probate-court matters over which circuit courts lack appeal jurisdiction (implied premise).

However, I question our analysis in Jim Walter, in view of five considerations. First, we completely overlooked the long-standing jurisdictional bar discussed above.

Second, in holding that our mandamus jurisdiction tracks our appeal jurisdiction (the first premise), Jim Walter relied on an inapplicable statute, § 12-3-11, Ala. Code 1975. That statute provides: "Each of the courts of appeals shall have and exercise original jurisdiction in the issuance and determination of writs of quo warranto and mandamus in relation to matters in which said court has appellate jurisdiction." (Emphasis added.) As seen from the emphasized language and from the fact that that section is located in Title 12, Chapter 3 ("Court of Criminal Appeals and Court of

Civil Appeals"), that section applies only to the two intermediate appellate courts. In contrast, § 12-2-7, regarding this Court's jurisdiction, does not contain a parallel provision making mandamus jurisdiction track appeal jurisdiction. Rather, § 12-2-7 provides mandamus jurisdiction to this Court only where no other court has jurisdiction or where mandamus review is necessary for general supervision of inferior courts, as discussed above. § 12-2-7(2) and (3).

Third, even if the premise of Jim Walter that mandamus jurisdiction tracks appeal jurisdiction had been correct, it would not have applied in Jim Walter. There, the probate-court decision at issue was the court's refusal to record certain mortgages. 91 So. 3d at 52. There was not, and would never have been, an appealable final order in that "matter," because it was not a judicial case; rather, it was a stand-alone administrative decision of the probate court. See id. at 53 ("[I]mposing the recordation tax on a mortgage recorded in a county is part of the administrative duties of the probate judge ...."); cf. Ramagnano v. Crook, 88 Ala. 450, 451, 7 So. 247, 247 (1890) ("The case is not covered by [the predecessor of § 12-22-20], which allows an appeal to this court from 'any

final decree of the court of probate, or from any final judgment, order or decree of the judge of probate.' An order refusing to grant a license, whether the act be the exercise of a ministerial or quasi-judicial function, would no more be a final order or decree than a like refusal to approve the bond of an officer would be. It is no such adjudication of the right involved as would be a bar to a subsequent renewal of the same application, by the same person, on the same state of facts; and this is the test of a final decree. It could be re-considered at any time, without regard to the act of previous refusal. This has, heretofore, been the universally accepted interpretation of this section of the Code, in the practice before this court." (emphasis omitted)). Thus, in Jim Walter the only avenue for review in the probate-court matter was mandamus, so any jurisdictional-tracking rule was irrelevant. Therefore, the first premise of Jim Walter was pure dicta.

Fourth, in Jim Walter this Court assumed that the circuit court lacked mandamus jurisdiction over the probate-court decision because the circuit court lacked appeal jurisdiction over that decision (the fourth, implied premise). See 91 So. 3d at 52 (citing § 12-22-21 and Oliver). That assumption was

simply incorrect. Under the long line of precedent discussed above, a circuit court has mandamus jurisdiction over probate-court matters regardless of whether the circuit court has appeal jurisdiction over the matter. Indeed, several cases in that line of precedent specifically held that the circuit court had exclusive mandamus jurisdiction over probate-court decisions that were not within the appealable categories in § 12-22-21. See Ramagnano, 88 Ala. 450, 7 So. 247 (holding that circuit court had exclusive mandamus jurisdiction over probate court's denial of a liquor license, a decision not within appealable categories in predecessor of § 12-22-21 (§ 3641, Ala. Code 1886)); Ex parte Town of Roanoke, 117 Ala. 547, 23 So. 524 (1898) (holding that circuit court had exclusive mandamus jurisdiction over probate court's grant of writ of habeas corpus to ordinance violator, a decision not within appealable categories in predecessor of § 12-22-21 (§ 458, Ala. Code 1896)); Christopher v. Stewart, 133 Ala. 348, 32 So. 11 (1902) (holding that circuit court had exclusive mandamus jurisdiction over probate court's order striking untimely objections to creditors' claims, while specifically holding that circuit court lacked appeal jurisdiction under

predecessor of § 12-22-21 (§ 458, Ala. Code 1896)). By holding to the contrary, Jim Walter effectively overruled those cases, sub silentio, without any argument by the parties that they should be overruled.

Moreover, when the Legislature wants to remove mandamus jurisdiction from the circuit courts, it knows how to do so. Under the constitution and statutes, the Court of Civil Appeals' mandamus jurisdiction tracks its appeal jurisdiction. Art. VI, § 141(c), Ala. Const. 1901; § 12-3-10, Ala. Code 1975. Thus, the Legislature may remove the circuit courts' mandamus jurisdiction over probate-court cases by lodging appeal jurisdiction in the Court of Civil Appeals. And the Legislature has done this for specific types of probate-court cases. See § 12-3-10 (adoption cases); id. (decisions of certain administrative agencies); SC Realty, Inc. v. Jefferson Cty. Tax Assessor, 638 So. 2d 1343 (Ala. Civ. App. 1993) (holding that probate court was "administrative agenc[y]" covered by § 12-3-10 for purposes of appeal of probate court's denial of tax-refund petition); § 22-52-15, Ala. Code 1975 (involuntary commitments of mentally ill persons). Outside those statutory carve-outs, the Legislature has not seen fit

to remove mandamus jurisdiction from the circuit courts, and this Court should not presume to do so on its own.

Fifth, our assumed fourth premise in Jim Walter -- that circuit-court mandamus jurisdiction tracks circuit-court appeal jurisdiction -- was inconsistent with a case decided two years earlier. In Ross v. Rosen-Rager, 67 So. 3d 29 (Ala. 2010), we held that a circuit court had mandamus jurisdiction in a probate-court matter that was not within the circuit court's appeal jurisdiction. In Ross, a party failed to challenge a probate court's issuance of a certificate of redemption. Id. at 32. Certificate-of-redemption matters are not within circuit courts' appeal jurisdiction. See § 12-22-21; Russell v. Russell, 758 So. 2d 533, 536-37 (Ala. 1999); Jett v. Carter, 758 So. 2d 526, 528-30 (Ala. 1999). However, this Court held that the party could have challenged the probate court's decision in the circuit court via a petition for an extraordinary writ (such as mandamus) because "'circuit courts have "a general superintendence" over the probate courts.'" Ross, 67 So. 3d at 38 (quoting Franks, 679 So. 2d at 216).

This inconsistency between Ross and Jim Walter has not

gone unnoticed. Recognizing the inconsistency, the Court of Civil Appeals has invariably disregarded Jim Walter and followed Ross. See Equity Ventures, LLC v. Cheaha Bank, 267 So. 3d 854, 857-58 (Ala. Civ. App. 2018); Surginer v. Roberts, 231 So. 3d 1117, 1125-26 (Ala. Civ. App. 2017); Wall to Wall Props. v. Cadence Bank, N.A., 163 So. 3d 384, 388 (Ala. Civ. App. 2014). Moreover, Jim Walter's jurisdictional analysis has been cited by this Court only once, in what was arguably dicta. See Ex parte State ex rel. Alabama Policy Inst., 200 So. 3d 495, 513 & n.6 (Ala. 2015).

In light of these considerations, I view Jim Walter as a silent, unjustified departure from the well established principles of jurisdiction discussed above. Thus, I would use this case as an opportunity to reaffirm the narrow jurisdictional range of this Court's mandamus review, as limited by constitutional and statutory law. This Court should not directly review by mandamus decisions of inferior courts that may be reviewed by some other court. And circuit courts have general supervisory jurisdiction to review by mandamus nonappealable decisions of probate courts, regardless of whether an appeal would lie to the circuit court in a

particular probate-court matter. To the extent that Jim Walter is inconsistent with these jurisdictional principles, I would overrule it.[16]

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[16]Although this Court requested and received supplemental briefing on jurisdiction from the parties and none objected to our review of this case, the parties' agreement cannot provide a basis for jurisdiction. We have a duty to independently determine our jurisdiction, regardless of the parties' positions. See Ex parte Tubbs, 585 So. 2d 1301, 1302 (Ala. 1991) (noting, in case regarding this Court's jurisdiction over petition for mandamus review of decision of Alabama Board of Adjustment: "This Court can act only within the jurisdiction conferred by law, and that jurisdiction cannot be enlarged by waiver or by the consent of the parties."); Ex parte Barger, 243 Ala. 627, 11 So. 2d 359 (1942) (substantially same).

For the same reason, although we ordinarily are disinclined to overrule our own precedent without a request from a party, see Ex parte McKinney, 87 So. 3d 502, 509 n.7 (Ala. 2011), nevertheless, when the issue at hand is our lack of jurisdiction, the parties' agreement cannot thwart our inherent and nondelegable duty to accurately determine our own jurisdiction in adherence to constitutional and statutory bounds. See Nettles v. Rumberger, Kirk & Caldwell, P.C., 276 So. 3d 663, 669 n.1 (Ala. 2018) ("[O]rdinarily this Court is disinclined to overrule existing caselaw in the absence of a specific request that we do so. It is the duty of this Court, however, to consider its own appellate jurisdiction, and '[w]e therefore are not confined to the arguments of the parties in our subject-matter-jurisdiction analysis.'" (citation omitted)); id. at 673 (Shaw, J., dissenting) ("[W]e will, on our own motion, address the lack or absence of subject-matter jurisdiction ...."). This truism is especially applicable where, as here, both parties have a potential systemic incentive to argue in favor of jurisdiction. For example, both parties may prefer to have this Court review the case in the first instance, rather than going first to the circuit court. But the parties' forum preference does not provide a

In response to this discussion of Jim Walter, Justice Bolin's special concurrence ("the concurrence") appears to contend that the allocation of mandamus jurisdiction among appellate courts should mirror the allocation of appeal jurisdiction. Whatever the practical appeal of that approach, it is simply not supported by anything in the text of the constitution and statutes, or even by anything in 150 years of our jurisprudence other than the ipse dixit of Jim Walter. Most tellingly, the concurrence argues "[b]y ... analogy" from jurisdictional-mirroring language in the statute that governs the courts of appeals. ___ So. 3d at ___. By contrast, that language is nowhere to be found in the constitutional and statutory provisions that govern this Court's and the circuit courts' jurisdictions. See Art. VI, § 140(b), Ala. Const. 1901; § 12-2-7(2) and (3), Ala. Code 1975; Art. VI, § 142(b), Ala. Const. 1901; § 12-11-30(3) and (4), Ala. Code 1975. An "analogy," by definition, means that two things are similar -- not contrasting -- at the relevant point. And it should go without saying that, if particular language is included in one section of the constitution or statutes but not in another, we

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basis for our jurisdiction.

presume that the difference was purposeful, and we do not ordinarily superimpose the language on the section from which it was omitted. See City of Pinson v. Utilities Bd. of Oneonta, 986 So. 2d 367, 373 (Ala. 2007).

Moreover, to the extent that the concurrence advocates for jurisdictional mirroring as a matter of policy, that is an issue for the Legislature. We are not at liberty to ignore or improve on the grants and limits of jurisdiction established by the Legislature and people of Alabama. See Morgan Cty. Comm'n v. Powell, 292 Ala. 300, 310, 293 So. 2d 830, 839 (1974). Nevertheless, it is worth noting that even the policy concerns raised by the concurrence do not withstand scrutiny. First, the specter of "inconsistent decisions" is simply not present here. If a circuit court decides on the merits a mandamus petition from a probate court and no one seeks further review in this Court, the circuit court's decision will be the law of the case. See Ex parte King, 821 So. 2d 205, 208-09 (Ala. 2001); Maldonado v. Flynn, 671 F.2d 729, 732 (2d Cir. 1982); United States v. Farr, 701 F.3d 1274, 1288 (10th Cir. 2012). Second, there is nothing "absurd" about multiple levels of appellate-court review and the time it

takes to complete them. This happens every week in this Court, with parties asking for certiorari or mandamus review of decisions of the courts of appeals in cases no less time-sensitive than those involving estates.

III. Effect of Mobile local act

A local act for Mobile County gives the Mobile Probate Court original jurisdiction concurrent with that of the circuit court in estate cases. § 45-49-85.60(a), (b)(1), (f), Ala. Code 1975. The concurrence contends that, in these cases, the circuit court lacks supervisory jurisdiction over the probate court. However, this Court specifically rejected that idea in Jett v. Carter, 758 So. 2d 526 (Ala. 1999). Interpreting a Jefferson County local act, we held that the circuit and probate courts' concurrent original jurisdiction does not affect the circuit court's supervisory jurisdiction over the probate court. Id. at 529-31. In other words, contrary to the concurrence's argument, concurrent jurisdiction does not convert a probate court into a circuit court; it remains a probate court, subject to the circuit court's supervision. The same day we decided Jett, we specifically applied its holding to the Mobile County local

act involved here. Russell v. Russell, 758 So. 2d 533, 536 (Ala. 1999), overruled on other grounds, Oliver v. Shealey, 67 So. 3d 73 (Ala. 2011).

Nevertheless, the concurrence attempts to show that Jett's rejection of a concurrent-jurisdiction-means-no-supervisory-jurisdiction rule was unnecessary because, in Jett, the probate court's jurisdiction was "statutory" rather than "equitable." ___ So. 3d at ___ & n.11. But that is a false dichotomy. Statutes may authorize and channel the exercise of judicial powers that were historically denominated equitable, just as much as those denominated legal. Indeed, as the concurrence seems to recognize, the Mobile County local act itself is an example of a statutory allocation of equitable powers. See also, e.g., § 12-13-1(b)(1)-(9), Ala. Code 1975 (conferring jurisdiction on probate courts over various matters that involve, to use the concurrence's language, "equitable relief ... with regard to estates," ___ So. 3d at ___ n.11).

More importantly, the concurrence's notion that the forum of review should be determined by the nature of the power exercised by the probate court -- concurrent jurisdiction

versus ordinary probate-court jurisdiction -- was also specifically rejected by this Court in Jett. We explained that such a distinction would be unworkable because of the unclear overlap between the broad jurisdiction of probate courts under general law and their not-so-well-defined jurisdiction under the local act. 758 So. 2d at 530 & n.8. The overlap is even less clear under the Mobile County local act, which, unlike the local act in Jett, confers concurrent "general and equity jurisdiction," § 45-49-85.60(a) (emphasis added).

Further, Jett dispelled any thought of a fork in the path of review based on a distinction between legal and equitable remedies. We noted that "the outdated language of [the local act] tends to lead a party to erroneously inquire whether a decision of the [probate court] was a decision in law or was one in equity." 758 So. 2d at 530 n.8. Indeed, the local acts' references to "equity" jurisdiction are at least unhelpfully unclear, and probably a misnomer. Cf. Regions Bank v. Reed, 60 So. 3d 868, 880 (Ala. 2010) ("[T]he reference in ... § 19-3B-203[(b)] to probate courts that have been granted 'statutory equitable jurisdiction' is an identifying

reference, not a limitation on the jurisdiction of the courts so identified.").

The concurrence also posits that the Mobile County local act's provision regarding appeals to this Court altered the general law regarding appeals from probate courts. Jett rejected this argument as well. 758 So. 2d at 528-31 & n.8. We explained that such a purported alteration would be difficult to apply and would frustrate the purpose of the local act "'to expedite and facilitate the administration of estates.'" Id. at 531 & n.8 (quoting Jefferson County local act). In short, the concurrence simply disagrees with the reasoning of Jett.

Similarly, the concurrence seems to suggest that, in Russell, this Court may have recognized that the Mobile County local act altered the general law. But in Russell, although we discussed a party's argument about the local act, we based our jurisdictional analysis solely on the general law, §§ 12-22-20 and -21. 758 So. 2d at 535-37.

Moreover, even if the Mobile County local act somehow altered the general law regarding appeals, that alteration would not, as the concurrence suggests, have any effect on

mandamus jurisdiction. As explained earlier in this dissent, appeal jurisdiction is a separate matter from writ jurisdiction. When the Legislature wants to refer to one or the other, it knows how to do so.[17] And here, the Mobile

[17]See, e.g., § 12-2-7 ("The Supreme Court shall have authority: (1) To exercise appellate jurisdiction coextensive with the state .... (3) To issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of courts of inferior jurisdiction." (emphasis added)); § 12-11-30 ("(3) ... The circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court and prosecutions for ordinance violations in municipal courts, except in cases in which direct appeal to the Courts of Civil or Criminal Appeals is provided by law or rule. ... (4) ... The circuit court shall exercise a general superintendence over all district courts, municipal courts, and probate courts." (emphasis added)); § 12-3-9 ("The Court of Criminal Appeals shall have exclusive appellate jurisdiction of all misdemeanors, including the violation of town and city ordinances, habeas corpus and all felonies, including all post conviction writs in criminal cases." (emphasis added)); § 12-3-10 ("The Court of Civil Appeals shall have exclusive appellate jurisdiction of all civil cases where the amount involved, exclusive of interest and costs, does not exceed $50,000, all appeals from administrative agencies other than the Alabama Public Service Commission, all appeals in workers' compensation cases, all appeals in domestic relations cases, including annulment, divorce, adoption, and child custody cases and all extraordinary writs arising from appeals in said cases." (emphasis added)); § 12-3-11 ("Each of the courts of appeals shall have and exercise original jurisdiction in the issuance and determination of writs of quo warranto and mandamus in relation to matters in which said court has appellate jurisdiction. Each court shall have authority to grant injunctions and issue writs of habeas corpus and such other remedial and original writs as are

County local act mentions only "appeals," not writs. § 45-49-85.60(e).

Finally, the concurrence repeatedly emphasizes what it believes to have been the "inten[t]" of the Legislature. ___ So. 3d at ___, ___, ___. Even assuming that the existence of an extratextual legislative "intent" is a valid concept,[18] that

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necessary to give it a general superintendence and control of jurisdiction inferior to it and in matters over which it has exclusive appellate jurisdiction ...." (emphasis added)); § 12-22-20 ("An appeal lies to the circuit court or Supreme Court from any final decree of the probate court, or from any final judgment, order or decree of the probate judge ...." (emphasis added)); § 12-22-21 ("Appeal from the order, judgment or decree of the probate court may be taken by the party aggrieved to the circuit court or Supreme Court in the cases hereinafter specified. Appeals to the Supreme Court shall be governed by the Alabama Rules of Appellate Procedure, including the time for taking an appeal. Appeal to the circuit court in such cases shall be within the time hereinafter specified ...." (emphasis added)).

[18]Scholars and judges have roundly and rightly criticized the idea that a body of legislators can have a unified "intent" that is knowable outside the text of a statute. E.g., State v. $223,405.86, 203 So. 3d 816, 831 (Ala. 2016); James v. Todd, 267 Ala. 495, 504-06, 103 So. 2d 19, 27-29 (1957); Max Radin, Statutory Interpretation, 43 Harv. L. Rev. 863, 869-72 (1930); Edwards v. Aguillard, 482 U.S. 578 (1987) (Scalia, J., dissenting); Kenneth A. Shepsle, Congress Is a "They," Not an "It": Legislative Intent as Oxymoron, 12 Int'l Rev. L. & Econ. 239, 244-45, 248-50, 254 (1992); Conroy v. Aniskoff, 507 U.S. 511, 518-19 (1993) (Scalia, J., concurring in judgment); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts xxii-xiii (2012) (foreword by Easterbrook, C.J.). One very real problem is that resort

"intent" is not the law. The words of the constitution and statutes are the law. See State v. $223,405.86, 203 So. 3d 816, 831 (Ala. 2016); James v. Todd, 267 Ala. 495, 504-06, 103 So. 2d 19, 27-29 (1957); Continental Can Co. v. Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund, 916 F.2d 1154, 1157 (7th Cir. 1990). So whatever the concurrence means by "a blind construction," ___ So. 3d at ___, it cannot mean the kind of construction engaged in here: firmly anchored to the text, as seen in the daylight of soundly reasoned precedent.

IV. Conclusion

Based on the constitutional and statutory provisions regarding this Court's jurisdiction and on our precedent applying those provisions for more than 150 years, I believe that this Court lacks jurisdiction to review Huntingdon College's petition for writ of mandamus. Therefore, although I do not disagree with the main opinion's analysis relating to Rule 60(b), Ala. R. Civ. P., the circuit court is the only appropriate court to engage in that analysis as a matter of

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to a supposed legislative "intent" tends to undermine the rule of law. It is an all-too-easy fig leaf for what judges want the law to be. Cf. Scalia & Garner, supra, at xxii-xxiii.

first review. Accordingly, I would dismiss the petition with leave to seek mandamus review in the circuit court.

SHAW, Justice (dissenting).

I respectfully dissent. Like Chief Justice Parker, I do not believe that this Court has jurisdiction to review by way of a petition for a writ of mandamus a decision of a probate court.

The Constitution provides that this Court has jurisdiction to issue writs "as may be necessary to give it general supervision and control" of lower courts. Ala. Const. 1901, Art. VI, § 140(b) (emphasis added). This jurisdiction is thus limited to when its exercise is "necessary." The Code provides similar authority. Ala. Code 1975, § 12-2-7(3).[19] The Constitution provides that a circuit court may be authorized to review decisions of an inferior court and have the authority to issue writs "necessary or appropriate to effectuate its powers." Ala. Const. 1901, Art. VI, § 142(b) (emphasis added). The Code further provides that circuit courts "shall exercise a general superintendence" over "probate courts." Ala. Code 1975, § 12-11-30(4) (emphasis

[19]Section 12-2-7(3) provides: "The Supreme Court shall have authority: ... To issue ... remedial and original writs as are necessary to give to it a general superintendence and control of courts of inferior jurisdiction." (Emphasis added.)

added).[20] Because circuit courts are assigned the primary authority to superintend probate courts, it is generally not "necessary" for this Court to do so.

Act No. 91-131, Ala. Acts 1991, p. 166 (amending Act No. 61-974, Ala. Acts 1961, p. 1550), essentially places the Mobile Probate Court on equal footing with the Mobile Circuit Court in certain matters. Appeals from certain decisions by the Mobile Probate Court lie to this Court. It seems logical that a petition for a writ of mandamus to review a decision of the Mobile Probate Court would similarly be submitted to this Court instead of a circuit court. But the act does not address mandamus review or remedial writs; it addresses only where appeals lie. Further, it expressly states that it does not limit or restrict the jurisdiction of the Mobile Circuit Court. Act No. 91-131, § 7.

Thus, the act does not affect the Mobile Circuit Court's power to review by a writ of mandamus the Mobile Probate Court's decisions that are otherwise nonappealable but subject to mandamus review. In turn, because the circuit court has

[20]The Code section provides: "The circuit court shall exercise a general superintendence over all district courts, municipal courts, and probate courts."

this authority, it is not "necessary" for this Court to exercise that authority under the Constitution and the Code. This result is both odd and potentially inefficient and burdensome, but it is not absurd.

The Mobile Circuit Court has the power to review the Mobile Probate Court's exercise of jurisdiction that is being challenged in this petition for a writ of mandamus. Because that court can do so, this Court cannot. I thus respectfully dissent.