MORRIS GRAY, Administrator of the Intestate Estate of the Late O. J. KAI GRAY, et al., Plaintiffs-In-Error, v. HIS HONOUR YUSSIF D. KABA, Assigned Circuit Judge, Sixth Judicial Circuit Court, Montserrado County, June Term, A. D. 1999, and the INTESTATE ESTATE OF THE LATE DAVID SAMPSON, represented by its Administrator, HARRISON R. SAMPSON, Defendants-In-Error.

Gray et al v Kaba et al [2000] LRSC 5; 40 LLR 38 (2000) (12 May 2000)

PETITION FOR A WRIT OF ERROR FROM THE RULING OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 5. 2000. Decided: May 12. 2000.

1. A party may intervene in an action as a matter of right when such party is likely to be bound by a judgment in the action, or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody or subject to the control of the court or an officer of the court.

2. The executor or administrator of an estate is a necessary and proper party to any action affecting the property rights of the estate.

3. The judgment of a trial court cannot legally be enforced against persons who were not parties to the suit and such persons cannot be bound by the judgment rendered in such action.

4. Persons affected by a writ of possession who were not served with summons are not to be concluded or bound by the judgment in the case.

5. The administrator of an estate is the proper and necessary party to defend and protect the estate.

6. The object of the provision of the appeal statute providing for the appointment or deputizing of an attorney to take the court's ruling for the absent attorney or party is to afford the absent party the opportunity to announce an appeal in open court at the time of the rendition of the final ruling or judgment.

7. It is irregular for a trial judge to ignore the statutory provision for the appointment or deputizing of an attorney to take the court's final judgment for an absent attorney.

8. The failure of a trial court to serve notice on a party for trial of a case or rendition of final judgment and to appoint and deputize counsel to take the court's final judgment constitutes sufficient legal ground for the granting of a writ of error.

9. An appeal is a matter of right which cannot be denied by a trial court.

The co-respondent, the Intestate Estate of the late David Sampson, by its administrator, Harrison T. Sampson, instituted summary proceedings against certain of the plaintiffs-in-error to recover real property. While the action was pending O. J. Kai Gray filed a motion to intervene and an answer. However, the movant died before the motion was called for hearing. Not-withstanding, the motion, which had been resisted, was called for hearing and granted by the trial court. Thereafter, the Co-respondent Intestate Estate filed a motion praying the trial court to rescind its ruling on the ground that the movant had died and that the Estate now had an administrator. Whereupon the administrator filed a notice of withdrawal of the motion to intervene previously filed by the decedent, and substituted the same with a new motion to intervene on behalf of the Estate.

In the absence of the administrator, the trial court entered a ruling denying the motion to intervene, without designating or deputizing an attorney to take the said ruling for the Estate or the absent counsel. The court then proceeded to enter default and final judgment in the matter, again in the absence of counsel for the estate and without designating or deputizing an attorney to take the ruling for the Estate. Thereafter, the trial court ordered enforcement of the judgment and proceeded to have the co-plaintiffs-in-error evicted from the premises, subject of the judgment. From this enforcement process the plaintiffs-in-error applied to the Supreme Court for a writ of error.

The Supreme Court held the trial court to be in error, noting firstly that intervention was a matter of right for the Estate and for the tenants since it was obvious that they were likely to be bound by the judgment of the trial court or that they would have been adversely affected by any distribution or disposition of the property by the court or the control of said property by the court. The Court noted also that the administrator was the proper party to represent the Estate and to therefore file on behalf of the Estate a motion to intervene to protect the rights and interests of the Estate.

Secondly, the Supreme Court held that the trial judge had erred in not designating or deputizing an attorney to take the ruling or final judgment of the court, noting that the purpose for the statute imposing this requirement on the trial judge was to afford the absent party the opportunity to make an oral announcement of an appeal to the Supreme Court. The Supreme Court opined that in ignoring the requirement, the trial court had deprived the plaintiffs-in-error of the right to an appeal and that in such a case a petition for a writ of error would lie.

The Court rejected the contention of the defendants-in-error that the administrator of the Estate could not benefit from a writ of error, having withdrawn without reservation the motion to intervene filed by the decedent prior to his death. Noting that the decedent and the Intestate Estate arising from his death were not one and the same, the Court declared that the withdrawal by the administrator of the motion to intervene and the answer filed by the decedent were legally

invalid and could therefore not serve to prevent the administrator intervening to protect the rights and interests of the Estate.

The Supreme Court also ruled that as the plaintiffs-in-error were never served with summons, they could not be bound by the judgment of the trial court. As such, the Court said, the trial court could not legally issue a writ of possession against the plaintiffs-in-error.

Accordingly, the Supreme Court granted the petition for the writ of error, reversed the trial court's judgment, and ordered the case remanded for a new trial commencing with the disposition of the administrator's motion to intervene.

George Tulay of Tulay & Associates appeared for the plaintiffs-in-error. Frederick A. B. Jayweh of the Civil Rights Association of Liberian Lawyers Associates appeared for the defendants-in-error.

MR. JUSTICE JANGABA delivered the opinion of the Court.

On September 1, 1998, the Intestate Estate of the late David Sampson, by and thru its administrator, Harrison T. Sampson, instituted summary proceedings to recover possession of real property against the Plaintiffs-in-error Cespha T. S. Fahn-bulleh, Fatu Golafalie, Marie Gibson, Kebbeh Kollie, Piance, Solomon Tars, Sam Benda, Solobery Kanneh, Ma Mary, Martha Pennoh, Joseph Sackie, Mapa, et al., in the Sixth Judicial Circuit Court for Montserrado County, during its September Term, A. D. 1998, before His Honour Wynston O. Henries, resident circuit judge. Co-defendant-in-error Harrison T. Sampson sought to repossess 10 acres of land situated and lying at Bushrod Island in Monrovia.

A writ of summons was accordingly issued on September 1, 1998, commanding the plaintiffs-in-error to appear and or file their returns on the 11th day of September, A. D. 1998. The writ was served and returned served on the 2nd day of September, 1998, as shown by the sheriff's returns. The records in this case show that the plaintiffs-in-error failed to file returns to the petition in the summary proceedings to recover possession of real property, a fact supported by a clerk's certificate issued on the 24th day of September, A. D. 1998. A further recourse to the records in this case disclosed that on the 11th day of September, A. D. 1998, O. J. Kai Gray, the decedent, filed a motion to intervene along with an answer. In the motion and answer, the intervenor (now deceased) disputed the claim of petitioner/co-defendant-in-error to the premises and denied that the latter possessed title thereto, contending instead that title to Lot No. 2-B, containing 34 acres of land situated, lying and being along Somalia Drive opposite the Free Port of Monrovia, Bushrod Island, was vested in the intervenor/ decedent. The intervenor proferted a public land sale deed executed in his favor on the 4th day of April, A. D. 1963 by the Republic of Liberia, under the signature of the late President William V. S. Tubman. The deed showed that it was probated on the 4th day of September, A. D. 1963 and registered according to law in volume 67-E, at page 2004.

The motion to intervene was resisted and heard, and, as a matter of right, granted on the 18th day of December, A. D. 1998 by His Honour Joseph W. Andrews, Assigned Circuit Judge.

Thereafter, on the 8th day of December, A. D. 1998, Co-defendant-in-error Sampson filed a four-count motion praying the court to rescind the ruling. He contended that as O. Jung Kai Gray, II was dead, he could not have intervened; rather, he said that as that Morris Gray was the administrator of the Intestate Estate of the late O. Jung Kai Gray, II, he should have been the proper party to seek intervention. He proferted with his motion phot copies of Morris Gray's letters of administration and the administrator's oath, dated August 13, 1997, respectively, as well as a petition for a decree of sale, dated August 18, 1997. On the 25th day of February, A. D. 1999, while the motion to rescind the ruling granting the motion to intervene was still pending, counsel for O. Jung Kai Gray, II, filed a notice of withdrawal of the motion to intervene without indicating any reservation.

The records further revealed that on the 16th day of March, A. D. 1999, Morris Gray, as administrator of the Intestate Estate of his Late father, O. Jung Kai Gray, II, filed a motion to intervene and an answer. In the motion and answer he claimed ownership to the 34 acres of land that his late father had acquired from the Republic of Liberia, and challenged the title and claim of Co-defendant-in-error Sampson, petitioner in the summary proceedings to recover possession of real property. This new motion was resisted and argued.

On the 26th day of June, A. D. 1999, His Honour Yussif D. Kaba, assigned circuit judge, ruled denying the motion. This ruling was made in the absence of the intervenor and his legal counsel. Although counsel for the intervenor had received and acknowledged a notice of assignment for the ruling, neither the intervenor nor his counsel had appeared as commended by the notice of assignment. The presiding judge did not appoint or deputize any counsel to take the ruling for the intervenor for the purpose of announcing an appeal therefrom. The trial court, upon a notice of assignment duly issued assigned for hearing on Saturday, July 10, 1999 the summary proceedings to recover possession of real property. The trial judge rendered default judgment against the plaintiffs-in-error when they failed to appear, and again as before, without appointing a deputizing counsel to take the ruling. The plaintiffs-in-error were ordered evicted and ousted from the premises. Thereafter, a writ of possession was accordingly issued and served to effect the eviction of the plaintiffs-in-error.

On the 27th day of July, A. D. 1999, Morris Gray, the administrator of the Intestate Estate of the late O. J. Kai Gray, II and the respondents in the court below filed an eleven-count petition for a writ of error. The alternative writ was issued on the 29th day of July, A. D. 1999, and was served and returned served on the 30th day of July, A. D. 1999. In the petition, the plaintiffs-in-error raised five (5) issues, of which 1, 2, 4, & 5 are deemed by this Court to be worthy of determination of this case. The first issue raised in the petition and brief, and argued before this

Court, is whether the trial judge committed a reversible error when he denied the motion to intervene filed by Morris Gray, administrator of the Intestate Estate of the late O. J. Kai Gray, II who, prior to his death, had acquired 34 acres of land from the Republic of Liberia and had sold a portion thereof to some of the co-plaintiffs-in-error.

Plaintiffs-in-error also averred that the denial of the motion to intervene deprived the Intestate Estate of the Late O. J. Kai Gray, II of its constitutional and statutory right to defend and protect the property and the grantees of the decedent.

We are in full agreement with the assertion of the plaintiffs-in-error, in that our statute clearly provides that a party may intervene in an action as a matter of right when such party could be bound by a judgment in such action, or where the party is so situated as to be adversely affected by a distribution or disposition of the property in the custody or subject to the control of the court or of an officer of said court. Civil Procedure Law, Rev. Code 1:5.61(1)(b)(c). The administrator of the Intestate Estate of the late O. J. Kai Gray, II, Morris Gray, has legal and equitable interest in and rights to the property of his late father. He therefore has an interest in the suit since he may be bound by a judgment in the action and adversely affected by a distribution or disposition of said property. This Court has consistently held in a long line of cases that the executor or administrator of an estate is a necessary and proper party to any action affecting the property rights of the estate. Sharpe v. Urey, 11 LLR 251 (1952), Syl. 4, text at 255-256; Cooper v. CFAO, 20 LLR 554 (1972), Syl. 7, text at 565. The trial judge therefore committed a reversible error when he denied the administrator's motion to intervene to protect and defend the rights and interests of the intestate estate of his late father as well as the grantees of the decedent. The motion to rescind the ruling granting O. J. Kai Gray, II motion to intervene clearly acknowledged the death of O. J. Kai Gray, II and recognized Morris Gray as the legal personal representative of the Intestate Estate of the late O. J. Kai Gray, II. We observed from the records that counsel for Co-defendant-in-error Harrison T. Sampson proferted documentary evidence which he obtained from the administrator. The filing of a motion to intervene in the action by the decedent in his own name rather than by and thru his legal representative, as required by law in this jurisdiction, is a legal nullity and there-fore has no legal effect to preclude the administrator of said estate from filing a motion to intervene in the case before us.

The second and fourth issues raised by plaintiffs-in-error revolved around whether the trial judge erred when he failed to appoint or deputize counsel to take the court’s ruling for the administrator on the motion to intervene. This failure, the plaintiffs-in-error contended, deprived the administrator of the right of appeal to this Court for a review of the trial judge’s ruling. The plaintiffs-in-error also contended that the trial judge’s rendition of final judgment in their absence and in the absence of their counsel, without appointing or deputizing another counsel to receive and except to said final judgment and appeal therefrom, deprived them of their constitutional and statutory rights of appeal. We shall decide these issues later in this opinion.

The fifth and last issue raised and argued by the plaintiffs-in-error is that the writ of possession was issued only against twelve persons, but that other co-petitioners not named in the writ of summons were also evicted from their lawful premises. They obtained a clerk's certificate dated the 23rd day of July, A. D. 1999 to substantiate that nine business houses were not parties to this case but were affected by the writ of possession. One Emily J. Moore, co-plaintiff-in-error, is also alleged to have been affected by the writ of possession. Plaintiffs-in-error strongly maintained that the judgment of the trial court, out of which these proceedings grow, cannot legally be enforced against those who were not parties to the suit and that they can-not be bound by the judgment rendered in such action. This principle of law is hoary with age in this jurisdiction. Hence, those who were affected by the writ of possession without being summoned are not concluded or bound by the judgment in this case. Tubman v. Murdoch, 4 LLR 179 (1934); Eitner v. Sawyers, 26 LLR 247 (1977); Boye v. Nelson, 27 LLR 174 (1978), Sy1. 1, text at 176; Karneh et al. v. Karneh et al., 25 LLR 300 (1976), Syl. 1.

The defendants-in-error filed returns, wherein they raised three issues which they also included in their brief. In the first and third issues raised, and which were argued by defendant-in-error, they contended that the writ of error cannot lie because the plaintiffs-in-error had failed and refused to file an answer and to take part in the trial of the case notwithstanding the fact that they were served with a copy of summons along with the complaint, as well as served a notice of assignment for the hearing of the case.

We agree with this assertion. This fact is not in dispute. However, the principal contention of the plaintiffs-in-error is that the trial judge committed a reversible error when he ruled on the administrator's motion to intervene and rendered his final judgment in the case in the absence of the administrator and his counsel and the respondents in the court below and their counsel without appointing or deputizing counsel to take and receive the ruling and final judgment so as to afford them the opportunity to appeal to this Court for appellate review. This is the decisive issue before this Court for consideration, which issue we observe the defendants-in-error failed to traverse in their brief.

The second issue relates to the withdrawal of the decedent's motion to intervene and his answer without reserving the right to refile. Defendants-in-error contended in their brief that a litigant seeking a writ of error cannot benefit under the error proceedings where he files a motion to intervene along with an answer but subsequently withdraws the same without reserving the right to refile. We disagree with this contention for the reasons herein stated, supra. The decedent and the administrator of his intestate estate are not one and the same person; and as such, the filing and withdrawal of the motion to intervene and the answer of the decedent in his own name is a legal nullity which cannot legally bar the representative of the deceased from intervening for the sole purpose of defending and protecting the interest and right of the intestate estate. The administrator is the proper and necessary party to defend and protect said estate as rightly and correctly contended by the co-defendant-in-error in his motion to rescind the ruling granting the decedent's motion to intervene in the case.

The defendants-in-error also contended before this Court that the plaintiffs-in-error had failed to pay the accrued costs and to annex a counsellors' certificate to their petition for the writ of error, and that because of these failings, the writ of error cannot be granted. In count 10 of the plaintiffs-in-error petition, they pleaded the payment of accrued costs and attached thereto as exhibits "E" and "F" respectively, the receipt for payment and the counsellors' certificate. A recourse to the records in this case reveals that the plaintiffs-in-error paid the sum of L$1,495.00 on the 22nd day of July, A. D. 1999 as accrued costs, and that Counsellors Joseph H. Constance and Snonsio Nigba signed the counsellors' certificate on the 22nd day of July, A. D. 1999. The contention of the defendants-in-error that the plaintiffs-in-error had failed to pay accrued costs and to attach a counsellor's certificate to the petition is therefore not sustained.

The last issue for the determination of this case is whether or not a writ of error can be granted for the failure of a trial judge to appoint or deputize counsel to take a ruling or judgment for the absent party and his counsel.

Our Civil Procedure Law governing the announcement of appeal states that "[a]n appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." Civil Procedure Law, Rev. Code 1:51.6. In the case Mitchell v. The Intestate Estate of the Late Robert F Johnson, 39 LLR 467 (1999), text at page 473, this Court held that "the object of this statutory provision providing for the appointment of a deputy attorney in the absence of a party or attorney representing such a party, is to afford an opportunity to such a party to announce an appeal in open court at the time of rendition of final judgment. It was therefore irregular for the trial judge to ignore this statutory provision when he rendered his final judgment without notice to the plaintiff-in-error and without an appointment of a court appointed counsel to take the final judgment. The failure of a trial court to serve the plaintiff-in-error with notice for trial and final judgment as well as the failure to appoint or deputize an attorney to take the final judgment constitute sufficient and legal grounds for the application for a writ of error."

In the instant case, the defendants-in-error do not deny that the trial judge never appointed a deputy counsel in the absence of the plaintiffs-in-error and their counsel at the time he ruled on the motion to intervene and subsequently rendered his final judgment in this case, subject of these error proceedings. We therefore hold, consistent with the decision in the Mitchell case, that the trial judge committed a reversible error when he ruled on the motion to intervene and subsequently rendered his final judgment without appointing a deputy counsel to take the ruling and the final judgment, respectively, so as to afford the plaintiffs-in-error their constitutional and statutory right to announce an appeal to this Court for our review of said ruling and the final judgment of the trial court. An appeal is a matter of right which cannot be denied by the trial court as was done in the instant case.

Wherefore, and in view of the foregoing, the petition for a writ of error should be, and the same is hereby granted. The ruling on the motion to intervene and the final judgment are hereby reversed and the case is remanded. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over this case for hearing, commencing with the administrator's motion to intervene. Costs are assessed against the defendants-in-error. And it is hereby so ordered.

Petition granted.