IN RE:

ESTATE OF ERA MAE CRAWFORD,

WAGGONER RICHARDSON,
CHARLES RICHARDSON AND
JUANITA MIZE,

Plaintiffs/Appellants,

VS.

PAT M. FRALEY, SUCCESSOR
EXECUTRIX, ESSIE BILES and
ANDY BILES,

Defendants/Appellees.

Appeal No.
01-A-01-9506-CH-00265

Lincoln Chancery
No. 10,010

FILED

February 14, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CHANCERY COURT OF LINCOLN COUNTY
AT FAYETTEVILLE, TENNESSEE

THE HONORABLE TYRUS H. COBB, CHANCELLOR

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REVERSED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
KOCH, J.

OPINION

This is an appeal from a decision by the trial court holding that the persons who joined in the petition to probate a will in common form could not subsequently contest the will. We reverse the trial court on the issue actually decided and remand the cause for further proceedings on the issue of estoppel.

I.

Era Mae Crawford died on September 18, 1993, at the age of 93. Prior to her death Ms. Crawford executed a will nominating John V. Matthews as the executor. However, Mr. Matthews died before Ms. Crawford on March 25, 1993.

On September 29, 1993, the beneficiaries under Ms. Crawford's will petitioned the Chancery Court of Lincoln County for probate of the will in common form and asked that Pat M. Fraley, John Matthews' daughter, be named executrix. The petitioners, Essie and Andy Biles (former neighbors of Ms. Crawford), Waggoner Richardson, Charles Richardson, and Juanita Mize (nephews and niece of Ms. Crawford), alleged that "said will is conformable in all respects to the statutes of the State of Tennessee regarding the execution of same . . . ." The court admitted the will to probate.

On April 12, 1994, Waggoner Richardson, Charles Richardson, and Juanita Mize filed a will contest naming Pat M. Fraley, Essie Biles, and Andy Biles as defendants. The plaintiffs alleged that the will previously admitted in September of 1993 was not the will of Ms. Crawford because she was of unsound mind at the time

the writing was executed. Additionally, the complaint alleged that Ms. Crawford was incompetent to make a will and was unduly influenced by Essie Biles and Andy Biles.

On May 10, 1994, Pat M. Fraley moved to dismiss the complaint against her, stating that all of the plaintiffs were petitioners for probate of the will of Ms. Crawford and all of them signed the petition, swore to it, and substantiated the allegations necessary to probate the will. Therefore, she concluded, the plaintiffs were estopped from contesting the will.

On May 13, 1994, Essie Biles and Andy Biles filed a Motion to Dismiss the plaintiffs' complaint for the same reasons.

In response to Pat M. Fraley's Motion to Dismiss, Waggoner Richardson filed an affidavit stating that when the plaintiffs executed the petition to probate, Pat Fraley told him that he could contest the will at any time irrespective of his signature on the petition. The other plaintiffs did not respond on the record to the defendants' Motion to Dismiss.

In a memorandum opinion dated January 25, 1995, the trial court held that notice of probate to interested parties in a case of probate in common form requires them to object to the will at the time of probate or be forever barred from doing so. The court found that the plaintiffs not only had notice of the probate, but joined in the petition to probate the will. Thus, as to the petitioners, the probate was in solemn form.

II.

We think the chancellor erred in holding that the probate of a will in common form is equivalent to probate in solemn form as to those who have notice. The case of *McClure v. Wade*, 34 Tenn. App. 154, 235 S.W.2d 835 (1950), is directly in point. In that case the opponents of the contest argued that the contestant, the sole heir at law, who was present when the will was probated, could not contest the will because, as to her, the probate was in solemn form. The court said, "The fact that Mrs. McClure was present did not convert this into a probate in solemn form . . . ." 235 S.W.2d at 843. Although not directly in point, the decision in *Miller v. Miller*, 52 Tenn. 723 (1871), can be taken as authority for the proposition that a party with notice of the probate in common form could later file a will contest.

III.

Estoppel, however, is a more serious matter for the appellants. See 80 Am. Jur. 2d *Wills* § 896. In Tennessee estoppel has frequently been upheld -- or rejected -- depending on the circumstances of each case. We have not found a case directly on point, but the opposing views may be found in *Hodges v. Hale*, 20 Tenn. App. 233, 97 S.W.2d 454 (1936) and *McClure v. Wade*, 34 Tenn. App. 154, 235 S.W.2d 835 (1950).

In *Hodges v. Hale* the court held that parties who had litigated a suit to construe a will were estopped to contest it because their action was an admission that the will was valid. The court distinguished the earlier cases of *Tate v. Tate*, 126 Tenn. 169, 148 S.W. 1042 (1912) and *Miller v. Miller*, 52 Tenn. 723 (1871), and relied instead on *Grier v. Canada*, 119 Tenn. 17, 107 S.W. 970 (1907), where, in a former proceeding, the contestant had alleged under oath that he was the owner of property that had been devised to him under a will that was "duly probated in the County Court of Gibson County." The *Grier* Court held that the allegation in the former case was a "solemn admission" of the validity of the will and that it had been legally probated.

In *McClure v. Wade*, the only child of the decedent was named executrix of the will. The will was found among the valuable papers of the decedent, and the daughter contacted a local attorney who probated the will. As we have seen, the daughter was present at the probate, although she did not sign the petition. When she later contested the will, she was met with a plea of estoppel because she had caused the will to be probated and had qualified as executrix under it. The court rejected the plea of estoppel, holding that it was the named executrix's duty to present the will for probate and that she acted without knowledge of any defect in its execution.

In an extensive examination of the authorities in Tennessee, the court stressed two important facts bearing on the decision. The first was the executrix's lack of knowledge of any defect in the will at the time of probate. The court quoted from *Tate v. Tate*, 126 Tenn. 169, 148 S.W. 1042 (1912) where the Court said, "Estoppel, even judicial estoppel, does not apply to one acting or speaking upon a mistaken view of the law upon undisputed facts."

The second important fact was the lack of prejudice to the other parties involved. The court cited *Neal v. Crook,* 2 Tenn. App. 364 (1926) and *Rogers v. Colville*, 145 Tenn. 650, 238 S.W. 80 (1921), in which the court said, "The basic reason for an estoppel is the inability of the parties invoking it to recover their losses or be restored to their former condition." 2 Tenn. App. at 368.

Under the present state of the record in this case we think it would be unjust to hold that the appellants are estopped to contest the will. While their unexplained action in joining the petition for probate may be a heavy burden to overcome, there is no proof of any prejudice to the proponents of the will resulting from the appellants' action. The decision below was based entirely on the assumption that the appellants could not contest the will because they had notice of the probate

in common form. We think the cause should be remanded for the court to consider the estoppel issue after the parties have been given the opportunity to develop a record containing the pertinent facts.

The judgment of the court below is reversed and the cause is remanded to the Chancery Court of Lincoln County for further proceedings in accordance with this opinion. Tax the costs on appeal to the appellees.

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BEN H. CANTRELL, JUDGE

CONCUR:

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HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

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WILLIAM C. KOCH, JR., JUDGE