

THE COURT OF APPEALS OF ARKANSAS HOLDS THAT AN
INDIVIDUAL THAT IS NOT AN INTERESTED PERSON UNDER THE
ARKANSAS PROBATE CODE HAS NO STANDING TO PETITION
FOR APPOINTMENT OF AN ADMINISTRATOR

In *Lucas v. Wilson*¹, the Court of Appeals of Arkansas held that an individual does not have standing to petition the court for appointment of an administrator if the individual is not considered an interested person under Arkansas statute.²

Silas Lucas (“Decedent”) died intestate³ on June 13, 2010.⁴ Teresa Wilson, appellee, filed a petition with the court for appointment of administratrix in July 6, 2010, claiming her status as “step daughter-in-law” entitled her to appointment.⁵ However, Carl Lucas, appellant, objected to Wilson’s petition for appointment and nominated himself as administrator as the youngest son of Decedent.⁶ The circuit court held a hearing on the petitions for appointment in September 27, 2010.⁷ At the hearing, the court noted that all of the heirs at law objected to Wilson’s appointment and consented to the appointment of Lucas.⁸ Wilson testified “that (1) the Decedent married her mother-in-law in June 1978, and lived nearby her; (2) she was the Decedent’s sole caregiver; (3) she had admitted him to the Cave City Nursing Home; and (4) she had held a power of attorney for the Decedent for the previous five years.”⁹ Lucas testified to being the Decedent’s son and identified the Decedent’s heirs.¹⁰ After hearing testimony from both Wilson and Lucas, the court found that both were qualified to serve as administrator under Arkansas statute.¹¹ The court granted Wilson’s petition and appointed her as administratrix, and Lucas filed a timely appeal.¹²

In an opinion written by Judge Robert J. Gladwin, the Court of Appeals of Arkansas held that an individual does not have standing to petition for appointment of an administrator if not meeting the “interested person” crite-

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1. 2011 Ark. App. 584, ___ S.W.3d ___.
 2. *Id.* at 6, ___ S.W.3d at ___.
 3. *Id.* at 4, ___ S.W.3d at ___.
 4. *Id.* at 1, ___ S.W.3d at ___.
 5. *Id.*, ___ S.W.3d at ___.
 6. *Id.* at 1-2, ___ S.W.3d at ___.
 7. *Lucas*, 2011 Ark. App. 584, at 2, ___ S.W.3d at ___.
 8. *Id.*, ___ S.W.3d at ___.
 9. *Id.*, ___ S.W.3d at ___.
 10. *Id.*, ___ S.W.3d at ___.
 11. *Id.* (referring to ARK. CODE ANN. § 28-48-101 (b)(Repl. 2004)).
 12. *Lucas*, 2011 Ark. App. 584, at 2, ___ S.W.3d at ___.

ria as specified by Arkansas statute.¹³ The court started by briefly discussing what an interested person is statutorily entitled to do, because Lucas claimed that the circuit court erred in finding that Wilson was an interested person.¹⁴ The court also included the statutory definition of “ ‘interested persons’ as ‘any heir, devisee, spouse, creditor or any other having a property right, interest in, or claim against the estate, and a fiduciary.’”¹⁵ The court noted that the circuit court found that Wilson had standing in three different ways: (1) as a potential creditor for care provided to the decedent, (2) as a potential creditor for money she spent caring for the decedent, and (3) “as a potential beneficiary in a wrongful-death lawsuit.”¹⁶

The court first discussed the potential creditor aspect of the circuit court’s ruling in which it found that Wilson was an interested person.¹⁷ Lucas argued that the relevant statutory law did not list “potential creditors” as being interested parties and that Wilson did not present evidence to show she was a creditor.¹⁸ The court agreed with that argument.¹⁹

In forming its opinion, the court considered the services provided by Wilson in caring for the Decedent and noted that a familial standard exists that the claimant must be overcome by showing that the services were of an “‘extraordinary character’” that a family member would not provide without being compensated.²⁰ The court relied on an Arkansas Supreme Court case that discussed the services provided by one family member to another.²¹ In *Russell v. Baumann*²², the Arkansas Supreme Court held that service rendered from one family member to another are presumed to be provided without any expectation of payment because they occur due to the family relationship involved.²³ The court found that the services which Wilson provided to the Decedent were of the same category as those in the *Russell* case.²⁴ Wilson did not present any evidence at trial that a service contract existed or that the services were of an extraordinary character.²⁵ The court

13. *Id.* at 3, ___ S.W.3d at ___ (including an excerpt from ARK. CODE ANN. § 28-40-107 (Repl. 2004)).

14. *Lucas*, 2011 Ark. App. 584 at 3, ___ S.W.3d at ___.

15. *Id.* at 4, ___ S.W.3d at ___. (citing to ARK. CODE ANN. § 28-1-102(a)(11)(Repl.2004)).

16. *Lucas*, 2011 Ark. App. 584 at 4, ___ S.W.3d at ___.

17. *Id.*, ___ S.W.3d at ___.

18. *Id.*, ___ S.W.3d at ___.

19. *Id.*, ___ S.W.3d at ___.

20. *Id.*, ___ S.W.3d at ___.

21. *Id.*, ___ S.W.3d at ___.

22. 239 Ark. 830, 394 S.W.2d 619 (1965).

23. *Lucas*, 2011 Ark. App. 584 at 5, ___ S.W.3d at ___ (citing *Russell*, 239 Ark. at 831-832, 394 S.W.2d at 620).

24. *Lucas*, 2011 Ark. App. 584 at 5, ___ S.W.3d at ___.

25. *Id.*, ___ S.W.3d at ___.

also noted that Wilson had not sought payment for the services from the estate.²⁶ Therefore, the court held that Wilson provided the services because of the family relationship with the Decedent and that Wilson was not a creditor due to the services she provided.²⁷

The court also found that Wilson was not a creditor due to any expenditures benefiting the Decedent.²⁸ Wilson did not present any evidence to the circuit court that showed specific items she paid for or any evidence that she sought compensation from the estate for reimbursement.²⁹ Therefore, the court found that the circuit court erred in concluding that Wilson was a potential creditor due to money she spent caring for the Decedent and that she was an interested person with standing to petition for appointment of an administrator.³⁰ The court also found that Wilson's petition was insufficient as a matter of law because it did not include an explanation of her entitlement to appointment pursuant to the relevant statutory law.³¹

The court also rejected the circuit court's finding that Wilson had standing due to being a potential wrongful-death beneficiary.³² The court held that even if the circuit court had decided that Wilson was a potential wrongful-death beneficiary because of an *in loco parentis* relationship, he still did not have an interest in the Decedent's estate.³³ The court held that Wilson's interest in "any litigation brought by the estate on behalf of the estate and the wrongful-death beneficiaries of the deceased" did not give Wilson any standing to petition for appointment of an administrator.³⁴ The court further noted that it would not determine whether Wilson actually did qualify as a potential wrongful-death beneficiary due to the alleged *in loco parentis* status with the Decedent because the circuit court had not ruled on that issue.³⁵ Therefore, the appellate court reversed and remanded the case for appointment of an administrator of the Decedent's estate.³⁶

In order to have standing to petition the court for appointment of an administrator of a decedent's estate, the claimant must be considered an interested person.³⁷ Though statutory law does list a creditor of an estate as an interested person,³⁸ *Lucas v. Wilson* determined that evidence must be

26. *Id.*, ___ S.W.3d at ___.

27. *Id.*, ___ S.W.3d at ___.

28. *Id.*, ___ S.W.3d at ___.

29. *Id.*, ___ S.W.3d at ___.

30. *Lucas*, 2011 Ark. App. 584 at 5-6, ___ S.W.3d at ___.

31. *Id.* at 6, ___ S.W.3d at ___ (citing ARK. CODE ANN. § 28-40-107 (c)(Repl. 2004)).

32. *Lucas*, 2011 Ark. App. 584 at 6, ___ S.W.3d at ___.

33. *Id.*, ___ S.W.3d at ___.

34. *Id.*, ___ S.W.3d at ___.

35. *Id.* at 7, ___ S.W.3d ___.

36. *Id.* at 8, ___ S.W.3d at ___.

37. *Id.* at 6, ___ S.W.3d at ___.

38. *Lucas*, 2011 Ark. App. 584 at 4, ___ S.W.3d at ___.

presented at trial to prove potential creditor status in order to provide the necessary standing to petition the court for appointment of an administrator.³⁹ In addition, an interest in potential wrongful-death litigation does not provide the standing required to petition for appointment of the estate.⁴⁰

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39. *Id.* at 4-6, ___ S.W.3d ___.

40. *Id.* at 7, ___ S.W.3d ___.