REL: March 8, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170928

Allison Rowland

v.

Richard Tucker, Mike Gunnells, Henry Scheuer, Mark Wise, and William Kruse, as trustees of the Beasley Spring Acres Neighborhood Improvement Trust

Appeal from Madison Circuit Court
(CV-06-2131)

EDWARDS, Judge.

The underlying dispute concerns real property located in an unincorporated area of Madison County referred to as Beasley Spring Acres ("BSA"). Allison Rowland, the owner of parcel 49 of BSA, appeals from a November 16, 2017, order

entered by the Madison Circuit Court purporting to enforce a May 1, 2008, judgment entered by that court as to the properties composing BSA. The motion to enforce the May 2008 judgment was filed by Richard Tucker, Mike Gunnells, Henry Scheuer, Mark Wise, and William Kruse, as trustees ("the trustees") of the Beasley Spring Acres Neighborhood Improvement Trust ("the trust").

As hereinafter discussed, the November 2017 order is void. A void order will not support an appeal. Johnson v. Hetzel, 100 So. 3d 1056, 1057 (Ala. 2012). Accordingly, we dismiss the appeal.

Facts and Procedural History

In June 2005, Tucker, Kruse, and Scheuer, individually, commenced an action seeking to prevent Hun Es Tu Malade? #16, LLC, David J. Slyman, Jr., and Todd J. Slyman from developing two parcels of property located in BSA for commercial purposes, specifically from constructing and operating a discount drugstore. See Hun Es Tu Malade? #16, LLC v. Tucker, 963 So. 2d 55 (Ala. 2006).

> "The trial court entered a summary judgment in favor of [Tucker, Kruse, and Scheuer], declaring that the two parcels owned by Hun Es Tu Malade and the Slymans were subject to the restrictive

> covenants found in their respective chains of title. The trial court also declared that [BSA], which had been developed by Clarence Beasley, a common grantor, had been developed pursuant to a common scheme. For these reasons, the trial court permanently enjoined Hun Es Tu Malade from developing its property for commercial purposes ...."

963 So. 2d at 57. On appeal, the Alabama Supreme Court affirmed the judgment, agreeing with the circuit court's conclusions that the parcels at issue were part of a common scheme of development and that the parcels were subject to restrictive covenants against commercial development. Id. at 68.

On October 30, 2006, while the appeal in Hun Es Tu Malade was pending in the supreme court, Tucker, Kruse, and Scheuer commenced an action in the circuit court against Hun Es Tu Malade, the Slymans, and Sterling Bank, which was a mortgagee of the property owned by Hun Es Tu Malade ("the 2006 action").[1] The 2006 action was assigned case number CV-06-2131, the case number for the proceedings at issue in

[1]Any issue of abatement of the underlying action in Hun Es Tu Malade or the 2006 action has been waived. See Ala. Code 1975, § 6-5-440; Baldwin Mut. Ins. Co. v. McCain, 260 So. 3d 801 (Ala. 2018).

the present appeal. Like the action at issue in Hun Es Tu Malade, the 2006 action involved a dispute as to the restrictions applicable to the property owned by Hun Es Tu Malade and the Slymans. However, numerous other persons intervened or were added as parties to the 2006 action, and eventually the circuit court certified a class in that action, with Tucker, Kruse, and Scheuer serving as class representatives. The members of the class were

> "[t]he Owners of all real property located within [BSA], as of the date of Preliminary Approval, and all Interest Holders in such real property as of that date, and all lessees, grantees, successors and assigns of the foregoing, but excluding from this definition Defendants and each one of them."[2]

On May 1, 2008, the circuit court entered a final judgment in the 2006 action. The May 2008 judgment incorporated a settlement agreement, a copy of which was appended to the judgment as "Appendix A,"[3] and dismissed the

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[2]The "Preliminary Approval" occurred on December 21, 2007.

[3]The May 2008 judgment references three appendices, all of which are included with the copies of the judgment appearing in the record: "Appendix A," the settlement agreement; "Appendix B," a list of owners of properties in BSA as of January 4, 2007, including a description of their respective parcels; and "Appendix C," a list of parcels in BSA that were entitled to elect to engage in certain commercial activities provided the owner of such parcel paid a "Release

2006 action, with prejudice, "[s]ubject to the provisions of the Final Order and Judgment." Based on the terms of the settlement agreement, it appears (1) that the parties who participated in Hun Es Tu Malade decided to compromise the rights accruing to them or duties imposed upon them, respectively, as a result of the judgment entered in that case and (2) that those parties and the members of the class agreed to a compromise as to disputes and potential disputes between them, specifically as to the existence of a common scheme of development for the properties composing BSA and the existence and enforceability of certain restrictive covenants as to those properties.

The May 2008 judgment states that "the Settlement is binding on all Plaintiffs, Class Members and Defendants, as well as each of their heirs, personal representatives, successors and assigns." The May 2008 judgment further states:

> "5. Subject to the terms and conditions of the Settlement, the Plaintiffs, Defendants, Class

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Fee," as defined in the settlement agreement. Such fees were to be paid to the trust, which was created, in part, to maintain beautification easements established in connection with the commercial activities.

Members (as well as each of their heirs, personal representatives, successors and assigns) and the Parties' counsel are hereby enjoined and ordered to perform their obligations under the Settlement, according to its terms and provisions.

"....

"8. All Plaintiffs, Class Members and Defendants (as well as each of their heirs, personal representatives, successors and assigns) are hereby permanently enjoined, precluded and barred from:

"....

"(e) engaging in or continuing any construction on, use of, or subdivision of any property in [BSA] that is inconsistent with the deed restrictions contained in the deed or chain of title to that property, except as authorized under the terms of this Final Order and Judgment and the Settlement appended hereto as Appendix A.

"....

"10. This Court decrees that all express restrictive covenants in the chains of title to the [BSA] properties are binding, valid and enforceable as written, and the Court finds that the same were imposed pursuant to a common scheme of development, except as to Lot 20 ... and other real properties for which Defendants and Class Members have made or hereafter make a valid Election of Commercial Status as provided by the terms of the Settlement and have paid or hereafter pay to Class Counsel the applicable Release Amount.

"....

"17. This Court reserves and maintains continuing exclusive jurisdiction over all matters relating to the administration, consummation,

enforcement, modification, construction and interpretation of the Settlement, this Final Order and Judgment, and all matters relating to the entry and enforcement of this Final Order and Judgment. ... This ruling shall not be construed as limiting actions by the Class brought before this Court to enforce provisions of the Settlement.

"....

"20. To effectuate the terms of the Settlement, this Court orders as follows:

"(a) The properties identified in Appendix B hereto[, which included parcel 49,] shall be and constitute the [BSA] neighborhood;

"(b) The properties identified in Appendix C hereto[, which did not include parcel 49,] shall be the only properties within [BSA] with the right to make an Election of Commercial Status, in accordance with the term of the Settlement appended hereto as Appendix A;

"(c) Except to the extent commercial use is permitted for properties under the terms of this Final Order and Judgment and the terms of the Settlement, restrictive covenants in the chains of title to the properties within [BSA] are confirmed and ratified, without change, and declared to in full force and effect.

"....

"....

"23. The Court further directs that the Clerk [of] the Court record this Final Order and Judgment in the Probate Office of Madison County, Alabama, and index this Final Order and Judgment in the chains of title to each of the properties listed in Appendix B."

The settlement agreement, which, as previously noted, was incorporated into the May 2008 judgment, defines the term "Beasley Spring Acres Neighborhood Improvement Trust" as

> "the trust and trust account to be established by Plaintiffs on behalf of the Class as part of this Settlement, and into which Release Amounts shall be deposited, and which shall be operated for the purposes provided herein. The Trust Agreement pursuant to which this trust will be created is attached hereto as Exhibit 'C.'"

The settlement agreement further states that

> "[t]he Beasley Spring Acres Neighborhood Trust shall be governed by a Trust Agreement which shall be approved by the Court. A copy of said Trust Agreement is attached as Exhibit 'C' hereto. The three (3) named Plaintiffs [Tucker, Kruse, and Scheuer], together with Mike Gunnells and Mark Wise, shall act as Trustees of the Beasley Spring Acres Neighborhood Trust in order to implement this Settlement and related Orders from the Court. The Trustees shall at all times be Owners of one or more parcels in [BSA]. If any Trustee shall become incapacitated or ineligible (including through an absence of ownership of property in [BSA]), the remaining Trustees shall within thirty (30) days, elect a substitute, eligible Trustee by simple majority, without regard to objection by any party."[4]

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[4]The settlement agreement references several exhibits, including the document to be used in creating the trust, i.e., "Exhibit C." However, the settlement-agreement exhibits are not included with the copy of the May 2008 judgment that was filed by the trustees as an attachment to their motion to enforce the May 2008 judgment or with the copy of the May 2008 judgment that was admitted into evidence at trial. Nor do the settlement-agreement exhibits appear at any other place in the

Section X of the settlement agreement provides that the parties to the 2006 action

> "shall seek and obtain from the Court a Final Approval Order, which shall include the following:
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> "....
>
> "10. A permanent bar and injunction of all Class Members, Plaintiffs and Defendants from: ... (e) engaging in or continuing any construction on, use of, or subdivision of any property in [BSA] that is inconsistent with the deed restrictions contained in the deed or chain of title to that property, except as authorized in the Settlement or any Final Approval Order."

The settlement agreement further provides, in pertinent part:

> "Following entry of the Final Approval Order, any Class Member, Defendant, or Plaintiff held by a court of competent jurisdiction to be in violation of this Settlement or the Final Approval Order shall be responsible for paying all court costs and the

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record. Rowland has attached what purports to be a copy of "Exhibit C" to her appellate brief. However,

> "[a]ppellate courts are not permitted to consider matters outside the record. See, e.g., Etherton v. City of Homewood, 700 So. 2d 1374, 1378 (Ala. 1997). '"'[A]ttachments to briefs are not considered part of the record and therefore cannot be considered on appeal.'"' Roberts v. NASCO Equip. Co., 986 So. 2d 379, 385 (Ala. 2007) (quoting Morrow v. State, 928 So. 2d 315, 320 n.5 (Ala. Crim. App. 2004), quoting in turn Huff v. State, 596 So. 2d 16, 19 (Ala. Crim. App. 1991))."

Ex parte Ruggs, 10 So. 3d 7, 10 n.2 (Ala. 2008).

> reasonable attorneys' fees of the party or parties seeking to enforce the provisions of this Settlement or Final Approval Order, provided the Court finds that such Class Member, Plaintiff or Defendant failed to cure the violation within 30 days, after receiving written notice thereof at least 30 days in advance of proceeding to enforce this Settlement."

Moreover, the settlement agreement provides:

> "Any action seeking directly or indirectly to challenge, modify, construe, obtain relief from, extend, limit, or enforce this Settlement shall be commenced and maintained only in this Court in this Action. Without in any way compromising the finality of its Final Approval Order, the Court shall retain exclusive and continuing in personam and in rem jurisdiction over all matters related in any way to this Settlement; including, but not limited to, the implementation of this Settlement and the interpretation, administration, supervision, enforcement and modification of this Settlement."

Rowland purchased parcel 49 from Robert H. Purser and Inez C. Purser, who were listed in Appendix B to the May 2008 judgment as being the owners of that parcel as of January 4, 2007.[5] The record does not reflect when the Pursers deeded parcel 49 to Rowland. However, Rowland does not dispute the terms of the settlement agreement, nor does she dispute that parcel 49 was included as one of the properties subject to the settlement agreement. Also, Rowland does not dispute that the

[5]The significance of January 4, 2007, is unclear.

following restrictive covenants, which are contained in the 1977 deed from Clarence Beasley to the Pursers, were included in her deed from the Pursers:

> "1. Said lot or tract is to be used for private residential purposes only, except that the owner shall be permitted to keep livestock in the manner prescribed by law, and engage in general home gardening pursuits, with no residence or dwelling to be erected, altered or permitted to remain on said premises for residence purposes other than one detached single-family dwelling house and one barn of suitably well kept appearance so as not to detract from the residential character of the adjoining area. No house trailer or mobile home, fixed or movable, shall be erected, placed, or permitted to remain on said premises.
>
> "2. No residence or dwelling house costing less than $15,000.00, exclusive of out-buildings, is to be constructed or placed on said premises.
>
> "3. Said lot or tract shall not be subdivided, partitioned, or conveyed in such a manner to form any lot less than 2.0 acres in size. In the event the lot or tract herein conveyed is divided or partitioned into two lots, as permitted under this restriction, then restrictions number 1 and 2 shall apply to each of those lots individually."

On May 25, 2017, the trustees filed a motion in the circuit court seeking to enforce the restrictive covenants as to parcel 49 against Rowland. The trustees alleged that, pursuant to the May 2008 judgment, the trust was "authorized by [the circuit court] to enforce the common deed restrictions

of all class members" and that the circuit court had jurisdiction over the enforcement of the May 2008 judgment.[6] According to the trustee's motion, Rowland was violating the restrictive covenants by operating a commercial farming operation, including "maintain[ing] multiple chickens, pigs, cows, and other animals on her property for sale, use, and/or commercial purposes." The trustees alleged that Rowland's activities "produc[ed] unpleasant odors and ... attracted flies and other pests that interfere with her neighbors' enjoyment of their properties" and that she "erected numerous structures and/or fixtures on the Property to support her

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[6]Kruse testified that "[t]he trust defends the deed restrictions in the neighborhood." He noted that, "without our deed restrictions, we don't have any protections in the county for anything. And so our deeds are our defense against people coming in and doing about anything they want to do." Kruse added:

> "One of the main things I'm trying to do is defend the neighborhood through defending the deed restrictions.
>
> "Because if you don't defend the deed restrictions, then you have one violation and another violation and pretty soon you don't have any protection.
>
> "And those deed restrictions are our protection for [BSA]. And I'm very intent on protecting our neighborhood."

commercial farming operation including a barn, feed lot, composting building, chicken coops, and other outbuildings." The trustees further alleged that Rowland's activities constituted a nuisance to the class members in the 2006 action and were causing a diminution in property values of the class members. The trustees alleged that they had provided Rowland with notice of her alleged violations of the restrictive covenants and that she had taken some actions in response to that notice, but that she had "refused to remove the livestock and physical structures from her property." The trustees requested a court order "[e]njoining ... Rowland from possessing livestock on her property for non-residential uses," "requiring [her] to remove those offending structures and/or fixtures that violate [the restrictive covenants]," and awarding the trustees "reasonable attorney's fees for bringing this Motion."

Rowland filed a response to the trustees' motion. She admitted that her property was "subject to the jurisdiction of [the circuit court] pursuant to [the May 2008 judgment]." However, she contended that she was not "in breach of any restrictive covenant contained in her deed" and that she was

not operating a commercial farming operation on her property. Rowland alleged that, "[w]hile she has livestock on her property ..., she does not sell the livestock for profit or otherwise profit from said livestock." Likewise, she alleged that, "[w]hile she has a barn (... this is acceptable under the deed restrictions) and she has a compost enclosure (outbuilding), she has no other structure on the property that would constitute a violation of her deed restrictions." Rowland contended that she was in compliance with the May 2008 judgment, and she requested that she be awarded attorney's fees should she prevail in defending against the trustees' motion.

The circuit court conducted an ore tenus proceeding on the trustees' motion, and, on November 16, 2017, the circuit court entered an order granting the trustees the relief they requested. The November 2017 order states that the trustees' motion for enforcement of the May 2008 judgment sought "injunctive relief and enforcement of certain deed restrictions against ... Rowland's use of" parcel 49 and that "Rowland contended that her use of [parcel 49] did not violate her deed restrictions or constitute a legal nuisance." After

describing the circuit court's findings of fact, the November 2017 order continues:

> "1. ... Rowland's use of the Farm constitutes a legal nuisance, as defined by Ala. Code [1975,] § 6-5-120 et. seq., to her direct neighbors and for the class as a whole that the Trustees represent;
>
> "2. [Rowland] violated her deed restrictions by exceeding the number of buildings allowed on her property and by failing to keep her property in suitably well-kept appearance so as not to detract from the residential character of the adjoining area;
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> "3. ... Rowland's ongoing conduct and use of her property causes her neighbors, and the class as a whole, damages that are difficult or impossible to properly quantify, which renders the possibility of money damages an inadequate remedy. Further, the balance of the hardships favors the Trustees; their requested relief does not disserve the public interest. Consequently, injunctive relief is appropriate in this matter;
>
> "4. The Trustees are the proper parties to enforce all nuisance claims in this matter against ... Rowland; this Court has both subject-matter and personal jurisdiction to adjudicate the issues presented. Venue is proper with this Court; and further
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> "5. The Alabama Right to Farm Act, Ala. Code [1975,] § 6-5-l27, and the Alabama Family Farm Preservation Act, Ala. Code [1975,] § 2-6B-1 et seq.[,] are both inapplicable to this case. Therefore, this Court concludes that the Trustees are entitled to the relief they sought from this Court."

The November 2017 order then purports to require Rowland to remove certain structures and equipment from parcel 49, to restrict her possession of animals by type and number, to impose certain maintenance obligations on her as to parcel 49 and her animals, and to enjoin her "from engaging in any business activities on [parcel 49]."

Rowland timely filed a postjudgment motion, and the trustees filed a "Motion for Assessment of Attorney's Fees and Expenses," seeking an award of $ 26,976.32 for attorney's fees and expenses allegedly incurred in connection with their motion to enforce the May 2008 judgment. Rowland filed a response to the trustees' motion, arguing that she was not a "class member, plaintiff, or defendant" in the 2006 action, and, thus, she said, attorney's fees and expenses could not be awarded against her.

On January 30, 2018, the circuit court conducted a hearing on Rowland's postjudgment motion and the trustees' motion for attorney's fees. On February 1, 2018, the circuit court entered an order granting Rowland 180 days to comply with the November 2017 order and denying all other relief requested in her postjudgment motion. The February 2018 order

also determined that the amount claimed by the trustees for attorney's fees and expenses was reasonable and granted the trustees' request for those fees and expenses.

Rowland appealed to the Alabama Supreme Court, which transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

Analysis

Rowland raises four issues as to the merits of the November 2017 order and the February 2018 order awarding attorney's fees and expenses. We pretermit any discussion of those issues, however, because, in the midst of Rowland's arguments, she points out that "no complaint was filed" and "no filing fee was paid" in conjunction with the trustees' motion for enforcement of the May 2008 judgment. (Rowland's brief at 1.) The financial history included on the circuit court's case-action-summary sheet confirms that no such filing fee was paid.

We note that the parties and the trial judge appear to have been confused as to how to characterize the trustees' motion for enforcement of the May 2008 judgment. The following colloquy occurred at the October 23, 2017, trial:

"THE COURT: ....

"The Court is here to conduct a hearing concerning purported violations of the restrictive covenants contained in a deed.

"It's my understanding that both parties think that the hearing is -- just the nomenclature of the hearing is different.

"As I understand it, one side says it is a hearing on a motion to enforce the settlement agreement that I signed in the case.

"And the other side -- and then the other side says it is a trial or an injunction.

"Before I decide exactly what the proper nomenclature is, let me just hear from both sides.

"[COUNSEL FOR TRUSTEES]: Yes, Your Honor. This action arises out of a case before this Court 12 years ago. And it seeks to enforce certain deed restrictions that the Court at that time granted power to the Trustees to enforce within the community.

"So although it arises out of the old case, there [are] new parties involved and essentially this is an evidentiary hearing to consider the allegations raised in our post-judgment motion and whether or not they can get the ruling sought.

"Though it is not necessarily a new action or a new case, I think we both agree that it has the effect of needing a contested evidentiary testimony on the record.

"[COUNSEL FOR ROWLAND]: Your Honor, I'm with you. I don't really know exactly what this is.

> "Your Honor, it's my understanding that this is a verified motion by a nonparty to the original suit versus a nonparty to the original suit.
>
> "There wasn't a complaint filed. There wasn't an answer required under the rules. There wasn't a pleading under Rule 8[, Ala. R. Civ. P.]. So I'm not sure this would warrant a new cause of action per se.
>
> "Rather, I would think that the only thing this Court has the power to do would be to apply whatever order it entered ten years ago or eight years ago.
>
> "So I do agree, however, that evidence can come in. I think we agreed to that in our pretrial hearing.
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> "THE COURT: Okay, I'm going to treat this as a evidentiary hearing on a motion to enforce my prior order.
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> "And once I hear and take the testimony, it would be my opinion that I would issue an order and for purposes of potential appeal, the order would be a final order.
>
> "Does that sound --
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> "[COUNSEL FOR ROWLAND]: That's correct, Your Honor.
>
> "[COUNSEL FOR THE TRUSTEES]: Yes, sir."

The foregoing confusion, however, does not change the nature of the substantive relief sought by the trustees against Rowland or what the law requires for the proper pursuit of that relief.

It is well settled that the "mislabeling of a motion is not fatal" and that our appellate courts are "'committed to the proposition that [we] will treat a motion (or other pleading) and its assigned grounds according to its substance.'" Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002) (quoting King Mines Resort, Inc. v. Malachi Mining & Minerals, Inc., 518 So. 2d 714, 718 (Ala. 1987)); see also Evans v. Waddell, 689 So. 2d 23, 26 (Ala. 1997) ("The substance of a motion and not its style determines what kind of motion it is."). The problem for the trustees is that the substance of their motion for enforcement of the May 2008 judgment involves a newly stated cause of action against Rowland based on her use of her property several years after the May 2008 judgment became final. As noted above, Rowland does not dispute that the May 2008 judgment is valid, that the settlement agreement is valid, or that either applies to parcel 49. Nor does she dispute that parcel 49 is subject to the deed restrictions discussed above. Rowland disputes that her activities violate those restrictions or constitute a nuisance, neither of which were at issue in the 2006 action or

were matters that could be subsumed into a motion to enforce the May 2008 judgment without filing a new action.[7]

More importantly, however, even were we to construe the trustees' motion for enforcement of the May 2008 judgment as constituting an attempt to file a new action for purposes of Rule 3(a), Ala. R. Civ. P. ("A civil action is commenced by filing a complaint with the court."), the lack of the payment of a filing fee is a jurisdictional defect affecting the viability of the November 2017 order and this appeal.

Section 12-19-70(a), Ala. Code 1975, requires a plaintiff to pay "a consolidated civil filing fee, known as a docket fee, ... at the time a complaint is filed in circuit court ...."[8] See also Ala. Code 1975, § 12-19-71 (amount of respective fees); and Rule 7, Ala. R. Jud. Admin. In Carpenter v. State, 782 So. 2d 848 (Ala. Crim. App. 2000), the Court of Criminal Appeals held that "[a] trial court does not

[7]Even Rowland's argument that the circuit court erred in awarding attorney's fees and expenses is derivative of some initial determination as to the underlying nuisance claim and deed-restriction claim.

[8]Alternatively,"[a] verified statement of substantial hardship, signed by the plaintiff and approved by the court, shall be filed with the clerk of court." Ala. Code 1975, § 12-19-70(b).

obtain jurisdiction of an action until either a filing fee is paid or the fee is properly waived according to § 12-19-70[, Ala. Code 1975]." Id. at 850. This court has cited Carpenter with approval and likewise has concluded that the failure to pay a required filing fee is a jurisdictional defect:

> "[T]he father did not pay a filing or docketing fee. Such a fee must be collected when a case is filed. See Ala. Code 1975, § 12-19-70 .... The failure to pay the filing or docketing fee is a jurisdictional defect. See Carpenter v. State, 782 So. 2d 848, 850 (Ala. Crim. App. 2000) (citing § 12-19-70; De-Gas, Inc. v. Midland Resources, 470 So. 2d 1218, 1220 (Ala. 1985)).
>
> "....
>
> "... The failure to properly serve the mother deprived the trial court of jurisdiction, ... as did the failure of the clerk to collect a filing fee. See Carpenter, 782 So. 2d at 850. The trial court's judgment was void for lack of jurisdiction. ... [A] void judgment will not support an appeal ...."

Farmer v. Farmer, 842 So. 2d 679, 681 (Ala. Civ. App. 2002); see also Ex parte Bragg, 237 So. 3d 235, 238 (Ala. Civ. App. 2017) (holding that a new case requires payment of a new filing fee, in the absence of which a trial court lacks jurisdiction).

Likewise, the Alabama Supreme Court has concluded that the failure to pay a required filing fee is a jurisdictional

defect and has cited Carpenter with approval. See Ex parte CVS Pharm., L.L.C., 209 So. 3d 1111, 1115-16 (Ala. 2016) (citing Carpenter); see also, e.g., Johnson v. Hetzel, 100 So. 3d 1056, 1057 (Ala. 2012) ("It is well established that '"[t]he payment of a filing fee or the filing of a court-approved verified statement of substantial hardship is a jurisdictional prerequisite to the commencement of an action."' Odom v. Odom, 89 So. 3d 121, 122 (Ala. Civ. App. 2011) (quoting Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008), citing in turn De-Gas, Inc. v. Midland Res., 470 So. 2d 1218, 1222 (Ala. 1985)). See also Ex parte Carter, 807 So. 2d 534, 536 (Ala. 2001) ('[T]he circuit court never had jurisdiction to consider Carter's Rule 32[, Ala. R. Crim. P.,] petition, because it did not collect a filing fee or approve Carter's affidavit of substantial hardship at the time the petition was filed.')." "[T]he jurisdictional prerequisite of the payment of the filing fee or the filing of a court-approved verified statement of substantial hardship was not met in this case. We must conclude, therefore, that the circuit court did not have jurisdiction to enter its judgment

dismissing Johnson's complaint; thus, that judgment is void.").[9]

A new action requires the payment of a filing fee. As our supreme court noted in Ryals v. Lathan Co., 77 So. 3d 1175 (Ala. 2011), a case likewise involving confusion as to the characterization of a party's filing in the context of a previously entered final judgment:

> "We recognize that in the present case the trial court purported to treat Lathan's amended complaint filed on September 22, 2008, as a new action. However, the trial court did not charge Lathan a new filing fee, nor did the trial court assign the amended complaint a new case number. The trial court's attempt to treat Lathan's amended complaint as a new action was in words only and was not sufficient to commence a new action. See, e.g., §

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[9] "The soundness of the jurisdiction-related holdings in Farmer[v. Farmer, 842 So. 2d 679 (Ala. Civ. App. 2002)], Vann[v. Cook, 989 So. 2d 556 (Ala. Civ. App. 2008)], and Odom[v. Odom, 89 So. 3d 121 (Ala. Civ. App. 2011),] has been questioned. See, e.g., Merriam v. Davidson, 184 So. 3d 411, 414 (Ala. Civ. App. 2015) (Thompson, P.J., concurring in the result). As Presiding Judge Thompson acknowledged in Merriam, however, our supreme court has 'effectively endorsed' the substance of those holdings. Id."

Ex parte Bragg, 237 So. 3d at 238. This court is bound by the decisions of the Alabama Supreme Court. See Ala. Code 1975, § 12-3-16.

> 12-19-70, Ala. Code 1975 (which provides that payment of a filing fee is mandatory)."

77 So. 3d at 1181. The Ryals court then concluded that the trial court in that case lacked jurisdiction, that the judgment at issue was void, and that the appeal was due to be dismissed. Id.; see also Ex parte McWilliams, 812 So. 2d 318, 321-22 (Ala. 2001) ("[T]he Court of Criminal Appeals correctly stated that the circuit court could not obtain subject-matter jurisdiction to consider a postconviction petition without first collecting a docket fee or granting a proper request to be allowed to proceed in forma pauperis. ... Thus, the Court of Criminal Appeals correctly determined that the order of the Escambia Circuit Court purporting to deny McWilliams's postconviction petition was void.").

We recognize that a trial court has "residual jurisdiction" to "take any steps that are necessary to enforce its judgment," Ex parte Caremark Rx, LLC, 229 So. 3d 751, 757 (Ala. 2017), but, as noted above, the present case does not concern whether the May 2008 judgment can or should be enforced. Instead, the trustees sought to enforce deed restrictions and to a assert a nuisance claim for the purposes of obtaining injunctive relief against Rowland. It just so

happens that the deed restrictions at issue were confirmed as applying to parcel 49 as part of the May 2008 judgment and the settlement agreement.

As our supreme court stated in Ex parte Caremark, "[a] court cannot broaden by mere declaration the residual jurisdiction it necessarily holds to allow it to interpret or enforce its judgments." 229 So. 3d at 757.

> "In Schramm v. Spottswood, 109 So. 3d 154 (Ala. 2012), this Court confronted a similar issue when the cross-appellants argued that the trial court could revisit a judgment entered in a boundary-line dispute finalized almost five years earlier. Specifically, they argued that their approximately five-year-late motion 'was nevertheless timely and appropriate because the trial court stated in [its final judgment] that it would retain jurisdiction over the case to determine any "subsequent issues" that arose regarding the boundary lines.' 109 So. 3d at 162. Notwithstanding the court's broad claim of residual jurisdiction, we rejected the cross-appellant's argument, recognizing that the final judgment previously entered was, in fact, final, and that the trial court had no jurisdiction to revisit the judgment, regardless of any claim to retained jurisdiction over the issue the cross-appellants sought to raise. Id."

229 So. 3d at 757. "The jurisdiction retained by the trial court after it entered its final judgment ... is limited to interpreting or enforcing that final judgment; the trial court could not extend its jurisdiction over any matter somehow

related to the June 2000 final judgment in perpetuity by simply declaring it so." Id. at 760. See also, e.g., Helms v. Helms' Kennels, Inc., 646 So. 2d 1343, 1347 (Ala. 1994) ("Although a trial court does have residual jurisdiction or authority to take certain actions necessary to enforce or interpret a final judgment, that authority is not so broad as to extend to the actions taken by the trial court in this case, especially the actions taken more than six months after the final judgment. In this case, there is nothing about the original final judgment that makes it ineffectual or that requires amendment by the trial court to resolve the claims made by the parties in the original action." (citation omitted)); Gulf Beach Hotel, Inc. v. Gulf State Park Auth., 58 So. 3d 727, 732 (Ala. 2010) ("[T]he trial court retained residual jurisdiction to enforce its judgment; however, that judgment was final. Accordingly, the trial court had no authority to consider new claims ...." (citations omitted)).

Conclusion

Based on the relief sought in the trustees' motion for enforcement of the May 2008 judgment, that motion should have been treated as a new action. The trustees' failure to pay

the required filing fee in conjunction with the commencement of the action resulted in a failure to invoke the jurisdiction of the circuit court. Accordingly, the circuit court's November 2017 order is void and will not support an appeal.

The trustees' request for the award of attorney's fees on appeal is denied.

APPEAL DISMISSED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.