

Rel: May 27, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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Jessie Tompkins

v.

William Pendleton & David Leslie Family Dentistry

**Appeal from Montgomery Circuit Court
(CV-21-220)**

FRIDY, Judge.

Jessie Tompkins appeals from a judgment entered by the Montgomery Circuit Court in favor of William Pendleton & David Leslie Family Dentistry ("Pendleton & Leslie"). For the reasons set forth herein, we dismiss the appeal for lack of jurisdiction with instructions to the

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circuit court to vacate its judgment and to dismiss the action in that court.

On September 30, 2020, Pendleton & Leslie filed a complaint in the Montgomery District Court against Tompkins, alleging that Tompkins owed it \$844 for Tompkins's breach of a contract and work and labor done by Pendleton & Leslie, along with an attorney fee of \$281.33. Tompkins filed an answer in which he denied responsibility for the claims. He also filed a counterclaim in which he asserted that Pendleton & Leslie had committed negligence and malpractice in its treatment of him. Specifically, he alleged that he had sought treatment – specifically, a root canal and the extraction of a tooth -- from Pendleton & Leslie and that, because Pendleton & Leslie had failed to perform the root canal, he had developed a tooth infection and required oral surgery. He claimed damages in the amount of \$1,500 for lost dental benefits, for the cost of oral surgery and other medical care, for pain and suffering, and for mental anguish. Pendleton & Leslie filed a reply in which it denied the allegations of the counterclaim.

On April 16, 2021, the district court entered an order that read, in pertinent part: "This case was before the Court for trial. Plaintiff and

Defendant appeared. After hearing testimony and considering the evidence, it is hereby ORDERED, ADJUDGED and DECREED that judgment is entered in favor of the Defendant." (Capitalization in original.) Although it ruled in favor of Tompkins, the district court did not set forth in its order the amount of damages to which Tompkins was entitled based on his counterclaim.

Pendleton & Leslie appealed the district court's order to the Montgomery Circuit Court. Tompkins filed a motion to dismiss, which the circuit court denied. The circuit court held a bench trial, after which, on September 30, 2021, it entered a judgment in favor of Pendleton & Leslie for \$681.33. Tompkins filed a timely motion for a new trial, which the circuit court denied.¹ Tompkins then filed a timely notice of appeal.

¹The thirtieth day following the entry of the circuit court's judgment was October 30, 2021. That day was a Saturday, so Tompkins had until November 1, 2021, to file a postjudgment motion. See Rules 6(a) and 59(b), Ala. R. Civ. P. The case-action-summary sheet in the State Judicial Information System indicates that Tompkins filed his postjudgment motion on November 8, 2021. However, Tompkins indicated in his appellate docketing statement that he had filed his postjudgment motion on November 1, 2021. Although Tompkins's postjudgment motion does not bear a stamp indicating when it was filed, Exhibit A to the motion is stamped by the circuit court as having been filed on November 1, 2021. In addition, the certificate of service attached to the motion indicates that Tompkins served counsel for Pendleton & Leslie with a copy of his postjudgment motion on October 30, 2021, and, in its brief on appeal,

Tompkins raises several arguments on appeal. We cannot reach those arguments, however, because we conclude that this court lacks jurisdiction over the appeal.

Section 12-12-70(a), Ala. Code 1975, provides:

"Any party may appeal from a final judgment of the district court in a civil case by filing notice of appeal in the district court, within 14 days from the date of the judgment or the denial of a posttrial motion, whichever is later, or, if the appeal is to an appellate court, within the time prescribed by the Alabama Rules of Appellate Procedure or the Alabama Rules of Juvenile Procedure where applicable, together with security for costs as required by law or rule."

(Emphasis added.) Section 12-12-71, Ala. Code 1975, provides that, except in certain circumstances not applicable here, "all appeals from final judgments of the district court shall be to the circuit court for trial de novo." (Emphasis added.)

As noted above, in the district court, Tompkins asserted a counterclaim against Pendleton & Leslie and sought money damages. The district court entered an order in Tompkins's favor, and there is no

Pendleton & Leslie state that Tompkins filed his postjudgment motion on October 30, 2021. Given all of these circumstances, we conclude that Tompkins filed his postjudgment motion in a timely manner, on or before November 1, 2021.

indication that that order was limited only to Pendleton & Leslie's claim against Tompkins. Even after applying the limited language of the district court's order to the claims both of the parties asserted against each other, the order is fundamentally deficient because it did not specify the amount of money damages awarded to Tompkins on his claim. "Where the amount of damages is an issue, ... the recognized rule of law in Alabama is that no appeal will lie from a judgment which does not adjudicate that issue by ascertainment of the amount of those damages." Moody v. State ex rel. Payne, 351 So. 2d 547, 551 (Ala. 1977). Indeed, "[t]hat a judgment is not final when the amount of damages has not been fixed by it is unquestionable." "Automatic" Sprinkler Corp. of Am. v. B. F. Goodrich Co., 351 So. 2d 555, 557 (Ala. 1977).

Because the district court's order finding in favor of Tompkins did not set forth a specific award of damages, it was not a final judgment subject to appeal under §§ 12-2-70(a) and -71. See Kelley v. Finley, 266 So. 3d 756, 758 (Ala. Civ. App. 2018). As a result, the circuit court did not acquire subject-matter jurisdiction over the action. See id. A judgment entered without jurisdiction is void, and a void judgment cannot support an appeal. See Williams v. Mari Props., LLC, 329 So. 3d 1237, 1240 (Ala.

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2020). We therefore dismiss Tompkins's appeal to this court with instructions to the circuit court to vacate its judgment and to dismiss Pendleton & Leslie's appeal from the district court's order as having been taken from a nonfinal judgment.

APPEAL DISMISSED WITH INSTRUCTIONS.

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