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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

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Donald Croom Beatty, Jr.

v.

Mary Alice Beatty Carmichael and the Estate of Mary Alice  
Gatlin Beatty, deceased

Appeal from Jefferson Circuit Court  
(CV-97-2209)

BRYAN, Justice.

Donald Croom Beatty, Jr., appeals from a judgment of the Jefferson Circuit Court ("the circuit court") dismissing an action involving the estate of his mother, Mary Alice Gatlin

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Beatty, deceased. For the reasons set forth herein, we dismiss Donald's appeal as untimely filed.

Facts and Procedural History

It is unnecessary to set forth in detail the procedural history of this case. The record on appeal indicates that Mary Alice Gatlin Beatty ("the decedent") died testate on December 2, 1995; that two of the decedent's children, Donald and Mary Alice Beatty Carmichael ("Mary Alice") filed separate petitions in the Jefferson Probate Court to probate two separate wills signed by the decedent; and that Donald and Mary Alice each filed a contest to the will submitted to probate by the other. The record further indicates that, on April 14, 1997, at Donald's request, the probate court entered an order transferring "the matter" to the circuit court. On May 8, 1997, the circuit court entered an order stating that it was assuming jurisdiction over the will contest pursuant to § 43-8-198, Ala. Code 1975, which generally provides authority to a probate court to transfer a will contest to the circuit court "[u]pon the demand of any party to the contest."

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The record further indicates that, on September 30, 1999, the circuit court granted a motion for a summary judgment filed by Mary Alice, upholding the validity of the decedent's will dated March 3, 1994, which had been submitted for probate by Mary Alice, and declaring that an instrument dated May 13, 1995, purporting to be the last will and testament of the decedent, which was submitted by Donald, was invalid and void.<sup>1</sup>

On November 3, 1999, the circuit court entered an order purporting to admit the will dated March 3, 1994, for probate and by separate order granted letters testamentary to Mary Alice. On June 9, 2005, at Mary Alice's request, the circuit court entered an order continuing the case on the court's administrative docket. The circuit court subsequently entered another order continuing the case on the court's administrative docket until July 9, 2010.<sup>2</sup> In that order,

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<sup>1</sup>The order granting Mary Alice's summary-judgment motion is not included in the record on appeal. However, the case-action summary includes an entry on September 30, 1999, stating that a summary judgment was entered, and a summary of the circuit court's holding in the September 30, 1999, order is included in an order in the record dated November 3, 1999.

<sup>2</sup>It appears that the second order continuing the case on the court's administrative docket was based on a request from Mary Alice that stated that a final settlement of the estate

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"counsel" was directed to file a written report of the status of the case on or before July 9, 2010. No written status report appears in the record on appeal.

On May 1, 2018, the circuit court entered an order removing the case from the court's administrative docket and dismissing the case based on the failure to file a status report as required by the court. On May 22, 2018, Donald filed a "motion to reconsider" the order dismissing the case. Donald asked the circuit court to reinstate the case to its administrative docket or, in the alternative, to conduct a "status conference wherein [he] can be given instruction by the court as to what steps [he] must take for this matter to remain in the administrative docket or place this matter on an active docket." On January 14, 2019, the circuit court entered an order purporting to deny Donald's motion to reconsider. On February 25, 2019, Donald filed a notice of appeal from the May 1, 2018, judgment of dismissal.

Motion to Dismiss

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was not appropriate because the estate was collecting rent on property that exceeded the amount that would be realized if the property were to be sold.

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On June 10, 2019, Mary Alice filed in this Court a motion to dismiss Donald's appeal as untimely filed. She argues that Donald's "motion to reconsider" was denied by operation of law on August 20, 2018, and that Donald failed to file a timely appeal after that motion was denied. We agree.

This Court treats a motion styled as a "motion to reconsider" as "a Rule 59(e)[, Ala. R. Civ. P.,] motion to 'alter, amend, or vacate' a judgment, if it complies with the guidelines for such post-trial motions set out in Rule 59." Ex parte Johnson, 673 So. 2d 410, 412 (Ala. 1994). See, e.g., Rule 59(e) (requiring a motion filed pursuant to that rule to be "filed not later than thirty (30) days after entry of the judgment"). Donald's "motion to reconsider" was filed within 30 days of the circuit court's May 1, 2018, order. However, because Donald's motion is treated as one filed pursuant to Rule 59, Rule 59.1., Ala. R. Civ. P., applied; under Rule 59.1., because the circuit court did not rule on Donald's Rule 59 motion within 90 days, the motion was denied by operation of law 90 days after it was filed, or on August 20, 2018. See Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1204 (Ala. 2009) (noting that, pursuant to Rule 59.1, "a

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postjudgment motion not otherwise ruled upon is denied as a matter of law on the 90th day after the motion is filed"). After Donald's postjudgment motion was denied by operation of law, the circuit court lost jurisdiction to consider that motion. See Ex parte Caterpillar, Inc., 708 So. 2d 142, 143 (Ala. 1997) ("If a trial court does not rule on a post-judgment motion within 90 days, it loses jurisdiction to rule on the motion.").

Pursuant to Rule 4(a)(1), Ala. R. App. P., Donald had 42 days from the date his postjudgment was denied by operation of law to file a notice of appeal. See Williamson, 12 So. 3d at 1204 ("The 42-day 'time for filing a notice of appeal shall be computed from the date of denial of such motion by operation of law, as provided for in Rule 59.1.'" (quoting Rule 4(a)(1))). Accordingly, Donald had until October 1, 2018, to file his notice of appeal. Donald, however, did not file his notice of appeal until February 25, 2019, long after the time for filing a notice of appeal had passed.

Donald argues that the circuit court did not have subject-matter jurisdiction to enter any order after it decided the will contest, including the May 1, 2018, order

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dismissing the case; he contends that, because the absence of subject-matter jurisdiction may be raised at any time, this Court should consider the merits of his appeal, despite the fact that his notice of appeal was not timely filed. This argument reveals a misunderstanding of this Court's appellate jurisdiction. "'Timely filing of the notice of appeal is a jurisdictional act. It is the only step in the appellate process which is jurisdictional.'" Harden v. Laney, 118 So. 3d 186, 187 (Ala. 2013) (quoting Committee Comments to Rule 3, Ala. R. App. P.). Rule 2(a)(1), Ala. R. App. P., provides that "[a]n appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court." (Emphasis added.) Thus, without a timely filed notice of appeal, the jurisdiction of this Court is not invoked, meaning that this Court has no authority or power to review the judgment being appealed. See Holmes v. Powell, 363 So. 2d 760, 762 (Ala. 1978) (holding that, given that a "timely filing of the notice of appeal is jurisdictional," this Court has "no alternative" but to follow the "mandate" of Rule 2(a) and dismiss an untimely appeal).

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Although it is true that the absence of subject-matter jurisdiction cannot be waived and that it can be raised at any time by any party, see generally Campbell v. Taylor, 159 So. 3d 4, 11 (Ala. 2014), this does not mean that a party can appeal from a judgment that was allegedly entered without subject-matter jurisdiction at any time. To hold otherwise would mean that an appeal from a judgment entered without subject-matter jurisdiction could be taken years or even decades after the judgment was entered. The Alabama Rules of Appellate Procedure, however, do not allow a notice of appeal to be filed outside the time parameters set forth in Rule 4, Ala. R. App. P. In circumstances in which a party wants to challenge a final judgment that was allegedly entered without subject-matter jurisdiction, Rule 60(b), Ala. R. Civ. P., provides a method for doing so. See generally Campbell, supra.

#### Conclusion

Donald's notice of appeal was untimely filed; therefore, it did not invoke the jurisdiction of this Court to consider the propriety of the judgment appealed. Accordingly, Donald's appeal is due to be dismissed.

APPEAL DISMISSED.

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Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ.,  
concur.