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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Perry Eugene Cox, Jr.

v.

Jennie Jo Cox Parrish, Debra Cox McCurdy, and  
Shirley Cox Wise, as coexecutors of the Estate of  
Perry Eugene Cox, Sr.

Appeal from Shelby Circuit Court  
(CV-16-900052)

MITCHELL, Justice.

This is an estate-administration case that is only partially before us. Perry Eugene Cox, Jr. ("Cox"), appeals

1170391

a judgment made final by the Shelby Circuit Court ("the trial court") under Rule 54(b), Ala. R. Civ. P. Specifically, the trial court held that Cox's counterclaim against his sisters, Jennie Jo Cox Parrish, Debra Cox McCurdy, and Shirley Cox Wise, as coexecutors of the estate of their father, Perry Eugene Cox, Sr. ("the decedent"), was time-barred by Alabama's nonclaims statute, § 43-2-350, Ala. Code 1975 ("the nonclaims statute"). The trial court dismissed Cox's counterclaim and certified its judgment as final and appealable. Cox appealed. Because the trial court exceeded its discretion in certifying its dismissal of Cox's counterclaim under Rule 54(b), no final judgment exists and we lack jurisdiction to decide this appeal. Accordingly, we dismiss the appeal.

#### Facts and Procedural History

Cox, the decedent, and Richard H. McCurdy formed Country Hills Estate, a general partnership ("the partnership"), in 1986.<sup>1</sup> In doing so, the partners executed a written partnership agreement. McCurdy withdrew as a partner shortly after the partnership was formed, leaving only Cox and the

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<sup>1</sup>According to the complaint, the partnership has also done business under the names "Country Hills," "Country Hills Farm," and "The Farm."

1170391

decedent as partners. Although the partnership acquired various assets such as livestock, vehicles, buildings, equipment, and real property through the years, its principal asset was approximately 260 acres of real estate in Shelby County ("the farm").

The decedent died testate on March 22, 2013, and the Shelby Probate Court issued letters testamentary on April 18, 2013. On January 19, 2016, after removing the probate action to the trial court, the coexecutors of the decedent's estate sued Cox, seeking, among other things, a judgment declaring 1) that the partnership was dissolved by operation of law in 1999; 2) that the partnership agreement became void in 1999 upon the dissolution of the partnership; 3) that Cox is estopped from claiming any interest in the partnership, the farm, or any partnership assets based on positions Cox took in prior judicial proceedings; 4) that the farm is an asset of the estate, not the partnership; 5) that the estate holds title to the farm; 6) that any partnership assets remaining at the decedent's death are assets of the estate; and 7) that ownership of those assets is vested with the estate.<sup>2</sup> Cox

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<sup>2</sup>The coexecutors asserted other claims in addition to the declaratory-judgment claim. All of the coexecutors' other

1170391

answered the complaint and filed a counterclaim on February 25, 2016, asking the trial court to require the coexecutors to convey to Cox the decedent's partnership interest at book value pursuant to a buyout provision contained in the partnership agreement. The coexecutors subsequently filed a motion for a partial summary judgment on the dissolution of the partnership and the ownership of the partnership assets, including the farm.

The trial court, in ruling on the coexecutors' motion for a partial summary judgment, dismissed Cox's counterclaim, holding that the partnership was dissolved in 1999 by operation of law and that at that time the partnership agreement became void.<sup>3</sup> The trial court, however, also granted Cox leave to amend his counterclaim. On March 13, 2017, Cox filed an amended counterclaim alleging that, regardless of whether the partnership was dissolved by operation of law in 1999, the partnership was subsequently revived, or, in the alternative, a new partnership was formed

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claims remain pending in the trial court.

<sup>3</sup>The trial court also entered a summary judgment in favor of the coexecutors on several, but not all, of Cox's affirmative defenses.

1170391

between Cox and the decedent following the dissolution of the original partnership, or, in the further alternative, dissolution of the partnership had been waived by the decedent. Based on these theories, Cox asked for a judgment declaring that he was entitled to 62.5% of the assets of the purported partnership.

The coexecutors moved for a judgment on the pleadings as to Cox's amended counterclaim, arguing that the counterclaim was barred by the nonclaims statute.<sup>4</sup> The trial court agreed and accordingly entered a judgment for the coexecutors as to Cox's counterclaim. In the introduction to its order granting the coexecutors' motion for a judgment on the pleadings, the trial court stated that the coexecutors were "entitled to judgment as a matter of law in their favor on" their declaratory-judgment count concerning the partnership and its assets and on their count seeking to eject Cox from the farm. The body of the order, however, discussed only whether the

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<sup>4</sup>Section 43-2-350(b) of the nonclaims statute, which applies to claimants other than personal representatives and their assignees or transferees, requires that "[a]ll claims against the estate of a decedent ... be presented within six months after the grant of letters, or within five months from the date of the first publication of notice, whichever is the later to occur ...."

1170391

nonclaims statute barred Cox's counterclaim and did not address any of the coexecutors' claims. In the conclusion of its order, the trial court, among other things: 1) granted the coexecutors' motion for a judgment on the pleadings, which requested a judgment only as to Cox's counterclaim; 2) dismissed Cox's counterclaim; and 3) certified its judgment as final under Rule 54(b). The coexecutors' declaratory-judgment claim and their additional claims remain pending in the trial court.

#### Standard of Review

In Centennial Assocs. v. Guthrie, 20 So. 3d 1277, 1279 (Ala. 2009), this Court explained the appropriate standard for reviewing a Rule 54(b) certification:

"If a trial court certifies a judgment as final pursuant to Rule 54(b), an appeal will generally lie from that judgment." Baugus v. City of Florence, 968 So. 2d 529, 531 (Ala. 2007).

"Although the order made the basis of the Rule 54(b) certification disposes of the entire claim against Guthrie [the defendant], thus satisfying the requirements of Rule 54(b) dealing with eligibility for consideration as a final judgment, there remains the additional requirement that there be no just reason for delay. A trial court's conclusion to that effect is subject to review by this Court to determine whether the trial court exceeded its discretion in so concluding."

Discussion

No party contests this Court's jurisdiction to decide this appeal. This Court is not limited, however, by the parties' jurisdictional arguments or the lack thereof. See Crutcher v. Williams, 12 So. 3d 631, 635 (Ala. 2008); Reynolds v. Colonial Bank, 874 So. 2d 497, 503 (Ala. 2003). The question of whether an order or judgment is final and therefore can support an appeal is jurisdictional. Crutcher, 12 So. 3d at 636.

With few exceptions not applicable here, this Court does not have subject-matter jurisdiction to decide a case in which a final judgment has not been entered. See, e.g., Ex parte Wharffhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001); Cates v. Bush, 307 So. 2d 6, 8 (Ala. 1975). A judgment is generally not final unless it disposes of all claims as to all parties. Dickerson v. Alabama State Univ., 852 So. 2d 704, 705 (Ala. 2002). Rule 54(b) creates a limited exception to this rule, stating, in relevant part:

"When more than one claim for relief is presented in an action, ... the court may direct the entry of a final judgment as to one or more but fewer than all of the claims ... only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

1170391

(Emphasis added.)

Because this Court disfavors piecemeal appellate review, we have consistently cautioned trial courts that certifications under Rule 54(b) should be entered only in exceptional cases. See Schlarb v. Lee, 955 So. 2d 418, 419 (Ala. 2006); Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004); State v. Lawhorn, 830 So. 2d 720, 725 (Ala. 2002); Baker v. Bennett, 644 So. 2d 901, 903 (Ala. 1994); Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373 (Ala. 1987). This Court has held that a trial court exceeds its discretion when it certifies a judgment as final pursuant to Rule 54(b) while claims remain pending before the trial court that, once decided, could render moot the necessity for appellate review of the claim on appeal. See Richardson v. Chambless, 266 So. 3d 684, 688 (Ala. 2018) (concluding that trial court exceeded its discretion by certifying a partial summary judgment as final under Rule 54(b) "because there was a "'possibility that the need for review [of that judgment] might ... be mooted by future developments in the [trial] court'" (quoting Lighting Fair,



1170391

Inc. v. Rosenberg, 63 So. 3d 1256, 1264 (Ala. 2010) (quoting in turn other cases) (alterations added in Richardson)).

In Richardson, a plaintiff brought a fraudulent-transfer claim against a husband and wife under the Alabama Fraudulent Transfer Act, § 8-9A-1 et seq., Ala. Code 1975 ("AFTA"), as well as related claims. 266 So. 3d at 685-86, 690 n.6. The plaintiff alleged that the husband had transferred his interest in his residence to his wife to avoid paying a judgment on separate claims pending against the husband. The trial court entered a judgment in favor of the wife on all claims against her and certified its order as final under Rule 54(b). On appeal, this Court noted that AFTA provided remedies only for creditors and that the final disposition of the plaintiff's claims against the husband could possibly deprive the plaintiff of his creditor status. 266 So. 3d at 689-90. If the plaintiff lost his creditor status, his AFTA and related claims against the wife, the judgment on which he had appealed, would be mooted. Id. "That possibility, coupled with the disfavor with which this court views Rule 54(b) certifications," led the Court to dismiss the appeal.

1170391

In Lighting Fair, materialmen plaintiffs sued a construction company, a bank, and homeowners in connection with a failure to pay for home-construction materials. 63 So. 3d at 1260. The homeowners thereafter brought cross-claims against the construction company and the bank. In accordance with an arbitration provision contained in the construction agreement, the trial court ordered the homeowners' claims against the construction company to be sent to arbitration. While that court-ordered arbitration was pending, the court entered a summary judgment for the bank and the homeowners on all claims brought by the materialmen and for the bank on all claims brought by the homeowners. The court certified its judgment as final under Rule 54(b). The materialmen and the homeowners separately appealed, but this Court dismissed both appeals. Notably, this Court determined that the outcome of the pending arbitration between the homeowners and the construction company could render moot some of the claims presented by the appeals. See id. at 1265-68.<sup>5</sup> That

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<sup>5</sup>Some portions of the appeals in Lighting Fair were dismissed because they involved claims that were so closely intertwined with claims pending in the court-ordered arbitration that separate adjudication would pose an unreasonable risk of inconsistent results. 63 So. 3d at 1266-67. A risk of inconsistent results constitutes an independent

1170391

determination led this Court to conclude that the trial court had exceeded its discretion in invoking Rule 54(b).

Based on the record before us, the coexecutors' pending claim for a declaratory judgment could possibly render Cox's appeal moot. The coexecutors request below that the trial court declare the farm, and all other assets at issue, to be assets of the estate. In the claim presented on appeal, Cox seeks a judgment declaring that he is entitled to 62.5% of the assets of the purported partnership. Thus, both the coexecutors' claim and Cox's counterclaim ask the trial court to determine the disposition of the decedent's assets. A resolution of either claim would likely require the trial court to determine whether the assets at issue are assets of a partnership between Cox and the decedent. Because the trial court is currently obligated to adjudicate the coexecutors' declaratory-judgment claim, it is possible that it will, in the course of doing so, necessarily resolve the issues at the

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reason to conclude that a trial court exceeded its discretion in certifying a judgment as final under Rule 54(b), but that does not appear to be an issue in this appeal.

1170391

heart of Cox's counterclaim.<sup>6</sup> Accordingly, Cox may have no reason to press the claim that is the subject of this appeal.

Cox, who brought this appeal, appears to agree that the trial court's resolution of the coexecutors' claim would necessarily resolve his claim as well. At a September 8, 2017, hearing on the coexecutors' motion for a judgment on the pleadings, Cox's counsel said:

"Whether [Cox's counterclaim is] a defense to [the coexecutors' declaratory-judgment claim] or whether it's couched in terms of a counterclaim the issue is the same. Who owns the property? Okay. So even if we didn't even consider the counterclaim as a defense we are saying no, no [the estate does not] own it. So either way ... the Court has got to determine -- I mean even if we didn't consider it as a counterclaim we could have said no counterclaim at all and then the Court would just have to decide who owns this property .... [T]he bottom line is ownership of this property is the matter in issue. Whether we couch it in a counterclaim or whether we just look at it as a defense to the original complaint, either way that's the issue, who owns the property."

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<sup>6</sup>The coexecutors' count seeking to eject Cox from the farm is also pending before the trial court. As a basis for that count, the coexecutors contend that the estate owns the farm. We recognize that a determination of who owns the farm is very closely related to Cox's request for a determination that he owns 62.5% of the assets of the purported partnership. Because the coexecutors' claim for a declaratory judgment as to all partnership assets will possibly moot the claim presented on appeal, we need not determine if resolution of the ejectment count could possibly moot Cox's claim as well.

1170391

(Emphasis added.) At a later hearing on October 31, 2017, Cox's counsel made the same point:

"Think about it this way, Judge, what if we didn't even have a counterclaim? They file a lawsuit to declare a partnership asset as a part of [the estate]. The burden is on them to prove that this is not a partnership asset but it is ... an estate asset. So they filed a claim -- I could just ride on my answer which denies that they have a right to claim this as an asset .... So you can ignore the counterclaim and they would still have the burden [of proof] ...."

(Emphasis added.) Additionally, in his reply brief to this Court, Cox states: "The core issue of both the [coexecutors'] initial complaint and Cox's Amended Counterclaim is essentially the same. Both sides seek to determine who has an interest in the Partnership assets." Those statements further suggest that Cox's declaratory-judgment counterclaim could just as well be litigated as a defense to the coexecutors' pending declaratory-judgment claim.<sup>7</sup> There is thus more than a mere possibility that a determination of the coexecutors'

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<sup>7</sup>Nothing in this opinion should be construed to disturb the trial court's partial summary judgment in favor of the coexecutors, in which it held that Cox's affirmative defenses of laches, waiver, and estoppel were insufficient against the coexecutors' claims. See note 3, supra.

1170391

declaratory-judgment claim will render moot Cox's request for a declaratory judgment.<sup>8</sup>

### Conclusion

Because resolution of the coexecutors' pending declaratory-judgment claim will possibly moot Cox's declaratory-judgment counterclaim, the trial court exceeded its discretion when it certified its dismissal of Cox's counterclaim as final under Rule 54(b). Absent a final judgment, we lack jurisdiction to decide the issues presented in this case, and we dismiss the appeal.

APPEAL DISMISSED.

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

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<sup>8</sup>The coexecutors contend that if Cox's counterclaim is barred by the nonclaims statute, the trial court would have nothing left to adjudicate as far as the partnership is concerned, because Cox would be "forever barred" from claiming an interest in the partnership. This argument ignores the fact that it is the coexecutors, not Cox, who initiated the declaratory-judgment claim that remains pending below. The nonclaims statute does not prevent Cox from mounting a defense to that claim.