

Rel: February 26, 2021

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**Craig F. Dyas and Dyas, LLC**

v.

**Marie S. Stringfellow et al.**

**Appeal from Baldwin Circuit Court  
(CV-19-900097)**

WISE, Justice.

Craig F. Dyas and Dyas, LLC ("the plaintiffs"), appeal from the Baldwin Circuit Court's November 12, 2019, orders disposing of some of their claims against some of the defendants below. Because those orders

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do not constitute a valid, final judgment that will support an appeal, we dismiss this appeal.

### Procedural History

On January 24, 2019, the plaintiffs filed a complaint asserting a declaratory-judgment claim against Marie S. Stringfellow; Carl F. Johnson, as trustee of a testamentary trust created under the will of Benjamin Clifton Simms, deceased; Edward Simms; Martha S. Allegri; Roy J. Simms, Jr.; and Jacqueline Simms Puckett.<sup>1</sup>

On March 7, 2019, Johnson filed a motion to dismiss pursuant to Rule 12(b)(6), Ala. R. Civ. P., or, in the alternative, a motion for a summary judgment ("Johnson's March 7, 2019, motion"), in which he sought to dispose the claim against him. On March 25, 2019, the plaintiffs filed their first amended complaint in which they added a constructive-trust claim against Stringfellow. On April 3, 2019, the trial court entered an order granting Johnson's March 7, 2019, motion. However, it subsequently vacated that order upon motion of the plaintiffs.

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<sup>1</sup>In the record, Jacqueline is referred to as both "Jacqueline Simms Puckett" and "Jacqueline Simms."

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On June 10, 2019, Stringfellow filed a motion to dismiss or, in the alternative, a motion for a summary judgment. In her motion, Stringfellow simply stated:

"Defendant adopts as her own the Motion of Defendant Carl F. Johnson to dismiss, or in the alternative, motion for summary judgment, and the argument therein, which motion was filed on March 7, 2019."

Also, on June 10, 2019, Allegri, Roy, Edward, and Jacqueline filed a motion to dismiss or, in the alternative, a motion for a summary judgment in which they incorporated the facts and arguments set forth in Johnson's March 7, 2019, motion.

On July 23, 2019, the plaintiffs filed a second amended complaint in which they again alleged a constructive-trust claim against Stringfellow and also added a breach-of-contract claim against Stringfellow. On August 22, 2019, Allegri, Roy, Edward, and Jacqueline filed a "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment Relating to the Plaintiff's Second Amended Complaint."

On November 12, 2019, the trial court entered an order, stating: "Motion to Dismiss Pursuant to Rule 12B filed by Stringfellow Marie S. is

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hereby GRANTED." (Capitalization in original.) On that same date, the trial court also entered a separate order in which it granted the August 12, 2019, motion to dismiss or, in the alternative, motion for a summary judgment filed by Allegri, Roy, Edward, and Jacqueline; it entered an additional order stating that the June 10, 2019, motion filed by those defendants was moot. The trial court did not enter an order addressing the claim against Johnson at that time.

On December 24, 2019, the plaintiffs filed a notice of appeal. In that notice, they listed Stringfellow, Edward, Roy, Jacqueline, Allegri, and Johnson as appellees. The notice of appeal also indicated that the plaintiffs were appealing from the trial court's November 12, 2019, orders.

On January 17, 2020, the trial court entered an order stating: "Upon further consideration, motion to dismiss filed on behalf of Carl Johnson is hereby granted."

#### Discussion

Although none of the parties has raised the issue, we must first determine, ex mero motu, whether the orders from which the plaintiffs are

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appealing constitute a final judgment that is capable of supporting an appeal.

"'A final judgment that will support an appeal is one that puts an end to the proceedings between the parties to a case and leaves nothing for further adjudication. See City of Birmingham v. City of Fairfield, 396 So. 2d 692 (Ala. 1981). ... Without a final judgment, this Court is without jurisdiction to hear an appeal. Cates v. Bush, 293 Ala. 535, 307 So. 2d 6 (1975).'

"Ex parte Wharffhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001)."

Deutsche Bank Nat'l Tr. Co. v. Karr, 306 So. 3d 882, 887 (Ala. 2020).

The plaintiffs filed their notice of appeal on December 24, 2019, and indicated that they were appealing from the trial court's November 12, 2019, orders. However, those orders did not dispose of the claim against Johnson. Because the November 12, 2019, orders did not adjudicate all the claims against all the parties, they did not constitute a final judgment that would support an appeal.<sup>2</sup>

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<sup>2</sup>We also question whether the trial court's November 12, 2019, order granting Stringfellow's motion to dismiss actually disposed of all the claims against her. In its November 12, 2019, order as to Stringfellow, the trial court merely stated that it was granting Stringfellow's motion to

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Additionally, the trial court did not have jurisdiction to enter its January 17, 2020, March 17, 2019, order purporting to grant Johnson's March 17, 2019, motion.

"The timely filing of a notice of appeal invokes the jurisdiction of an appellate court and divests the trial court of jurisdiction to act except in matters entirely collateral to the appeal. Altmayer v. Stremmel, 891 So. 2d 305, 309 (Ala. 2004); Osborn v. Riley, 331 So. 2d 268 (Ala. 1976). See also Committee Comments to Rule 3, Ala. R. App. P. ('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).

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dismiss. Stringfellow filed her motion to dismiss after the first amended complaint adding the constructive-trust claim against her was filed but before the second amended complaint adding the breach-of-contract claim against her was filed. Stringfellow's motion to dismiss did not specifically address the constructive-trust claim. Rather, Stringfellow merely adopted the arguments set forth in Johnson's March 7, 2019, motion. However, Johnson's March 7, 2019, motion was filed before the plaintiffs filed the first amended complaint and did not address the constructive-trust claim against Stringfellow. Additionally, Stringfellow did not file a motion to dismiss or an amended motion to dismiss addressing the breach-of-contract claim that was added in second amended complaint. Because Stringfellow's motion to dismiss did not actually address the constructive-trust and breach-of-contract claims against her, it appears that the trial court's November 12, 2019, order granting her motion to dismiss did not actually dispose of those claims.

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In Horton v. Horton, 822 So. 2d 431 (Ala. Civ. App. 2001), a husband filed a complaint seeking a divorce from his wife as well as, among other things, custody of the parties' minor child. The trial court entered a September 14, 2000, order awarding the parties joint custody. That order further stated that, "[a]fter the property issues have been settled or adjudicated in this case, the Court will incorporate this custody order into a final judgment." 822 So. 2d at 433. On October 10, 2000, the trial court set the case for trial on December 5, 2000. On October 25, 2000, the husband filed a notice of appeal to the Court of Civil Appeals from the September 14, 2000, custody order. The wife filed a motion to dismiss the appeal on the ground that it was not taken from a final judgment. The Court of Civil Appeals ultimately dismissed that appeal. However, on December 19, 2000, while the husband's appeal of the custody order was still pending in the Court of Civil Appeals, the trial court purported to enter a judgment of divorce that incorporated a stipulation and agreement of the parties and addressed the remaining contested issues in that case. The husband subsequently filed a notice of appeal to the Court of Civil

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Appeals as to the trial court's purported judgment of December 19, 2000.

On appeal, the Court of Civil Appeals stated:

"Although neither party has questioned this court's jurisdiction, we first consider whether we have jurisdiction over this appeal, because 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997) (quoting Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)).

"It is a well established rule that, with limited exceptions, an appeal will lie only from a final judgment which determines the issues before the court and ascertains and declares the rights of the parties involved.' Taylor v. Taylor, 398 So. 2d 267, 269 (Ala. 1981). A ruling that relates to fewer than all the parties in a case, or that determines fewer than all the claims, is ordinarily not final as to any of the parties or as to any of the claims. Rule 54(b), Ala. R. Civ. P.; see McGlothlin v. First Alabama Bank, 599 So. 2d 1137 (Ala. 1992). A 'final judgment is a "terminal decision which demonstrates there has been a complete adjudication of all matters in controversy between the litigants.'" Dees v. State, 563 So. 2d 1059, 1061 (Ala. Civ. App. 1990) (citing Tidwell v. Tidwell, 496 So. 2d 91, 92 (Ala. Civ. App. 1986)). The question whether a judgment is final is a jurisdictional question, and the reviewing court, on a determination that the judgment is not final, has a duty to dismiss the case; if the appellee has not moved for a dismissal, then the court should dismiss the appeal on its own motion. See Jim Walter Homes, Inc. v. Holman, 373 So. 2d 869, 871 (Ala. Civ. App. 1979).

"As we have stated, the husband filed a notice of appeal on October 25, 2000. 'Once an appeal is taken, the trial court

loses jurisdiction to act except in matters entirely collateral to the appeal.' Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982).<sup>1</sup> The husband's notice of appeal, although premature, had the effect of divesting the trial court of jurisdiction to rule upon the remaining issues in the divorce action until the appeal had been disposed; thus, the December 19, 2000, 'judgment' is a nullity. See Etheredge v. Genie Indus., Inc., 632 So. 2d 1324, 1325 (Ala. 1994) (holding that purported written order, entered after filing of notice of appeal from oral 'order,' was a nullity and would not support an appeal); accord, R.H. v. J.H., 778 So. 2d 839 (Ala. Civ. App. 2000). See also Thames v. Gunter–Dunn, Inc., 365 So. 2d 1216 (Ala. 1979), and Foster v. Greer & Sons, Inc., 446 So. 2d 605, 608–09 (Ala.1984) (noting general rule that 'jurisdiction of a case can be in only one court at a time' and stating that until an appellate court concludes that it lacks jurisdiction over an appeal, both the trial and the appellate court are 'bound by' the presumption that the appellate court does have jurisdiction).<sup>2</sup> Therefore, because the trial court has not effectively adjudicated the issues in this case, other than custody, the procedural posture of this appeal is no different than that in the husband's first appeal: there is no valid, final judgment for this court to review.

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<sup>1</sup>Examples of such 'collateral' matters include contempt proceedings and taxation of costs. E.g., Hall v. Hall, 485 So. 2d 747, 749–50 (Ala. Civ. App. 1986); Hinson v. Holt, 776 So. 2d 804, 813 (Ala. Civ. App. 1998), cert. quashed, 776 So. 2d 814 (Ala. 2000).

<sup>2</sup>Foster was overruled on other grounds by Ex parte Andrews, 520 So. 2d 507 (Ala. 1987)."

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Horton, 822 So. 2d at 433–34.

In this case, the plaintiffs' premature notice of appeal divested the trial court of jurisdiction to rule upon the remaining claims in the case. See Horton, supra. Therefore, the trial court's January 17, 2020, order was a nullity. Id. Accordingly, the trial court has not effectively adjudicated all the claims against all the parties in this case, and there is no valid, final judgment for this Court to review.<sup>3</sup>

" '[W]hen it is determined that an order appealed from is not a final judgment, it is the duty of the Court to dismiss the appeal ex mero motu.' Powell v. Republic Nat'l Life Ins. Co., 293 Ala. 101, 102, 300 So. 2d 359, 360 (1974)."

Deutsche Bank Nat'l Tr. Co., 306 So. 3d at 890.

### Conclusion

Because no valid, final judgment has been entered in this case, we dismiss this appeal.

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<sup>3</sup>Based on our disposition of this appeal, we pretermitt discussion of Johnson's argument that the appeal should be dismissed as to him because the plaintiffs did not file a timely notice of appeal as to the January 17, 2020, order.

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APPEAL DISMISSED.

Parker, C.J., and Bolin and Stewart, JJ., concur.

Sellers, J., concurs in the result.