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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Helen Kelton

v.

Bonnie V. Caldwell

**Appeal from Dallas Circuit Court
(CV-14-900037)**

DONALDSON, Judge.

Helen Kelton ("Helen") appeals from a judgment of the Dallas Circuit Court ("the trial court") in an ejectment action brought by Bonnie V. Caldwell. Because we conclude that

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the trial court lacked subject-matter jurisdiction over Caldwell's action, we dismiss the appeal with instructions.

On February 10, 2014, Caldwell commenced this action by filing a complaint naming Willard Kelton ("Willard") as the sole defendant. Caldwell's complaint alleged that he had purchased a parcel of real property ("the property") in Dallas County at a tax sale and that Willard, who had title to the property when Caldwell purchased it at the tax sale, had neither redeemed the property nor vacated it. As relief, Caldwell sought possession of the property and damages. It is undisputed, however, that Willard had died on July 13, 2012, over 18 months before Caldwell filed his complaint.

On March 26, 2014, an attorney, presumably acting at the behest of Helen, Willard's widow, filed a pleading purporting to be Willard's answer to the complaint. On February 4, 2015, Caldwell filed a motion alleging that he had confirmed that Willard was dead and seeking leave to add Helen, who was occupying the property, as a defendant in the action. The trial court entered an order granting Caldwell's motion; Caldwell subsequently amended his complaint to add Helen as a defendant. After being served with process, Helen answered

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Caldwell's amended complaint with a general denial. Thereafter, the action was tried, and the trial court entered a judgment providing that Helen would have to pay Caldwell \$33,706.66 by August 31, 2018, or forfeit her right to redeem the property. The judgment further provided that, should Helen fail to pay Caldwell \$33,706.66 by August 31, 2018, Caldwell would be vested with full title to the property and Willard and Helen would be divested of title to the property. Thereafter, Helen timely filed a notice of appeal. Our supreme court transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

Although neither party has raised the issue whether the trial court lacked subject-matter jurisdiction over this action, "'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Stone v. Haley, 812 So. 2d 1245, 1245-46 (Ala. Civ. App. 2001) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997)). "[An action] instituted against an individual who is deceased at the time the action is filed [is] a nullity and do[es] not invoke the trial court's jurisdiction." Maclin v. Congo, 106 So. 3d 405, 408 (Ala. Civ.

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App. 2012). Such an action is void ab initio, and "[t]he trial court ha[s] no jurisdiction to entertain an amendment of the complaint or any further motions or pleadings; it [is] required to dismiss the action for lack of subject-matter jurisdiction." Id.

In the present case, it is undisputed that Willard was dead when Caldwell commenced this action. Consequently, this action was void ab initio, and the trial court did not have subject-matter jurisdiction over it. See Maclin. Lacking subject-matter jurisdiction, the trial court was required to dismiss the action; the lack of subject-matter jurisdiction could not be cured by adding Helen as a defendant. Id. Thus, the trial court's judgment and all interlocutory orders it entered are void. Id. "A void judgment will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment." Maclin, 106 So. 3d at 408 (quoting Reed v. White, 80 So. 3d 949, 953 (Ala. Civ. App. 2011)). We therefore dismiss this appeal, albeit with instructions to the trial court to vacate its void judgment and orders.

APPEAL DISMISSED WITH INSTRUCTIONS.

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