

REL: December 31, 2020

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2181055

Pilgrim's Pride

v.

David Lee Smith

2190034

David Lee Smith

v.

Pilgrim's Pride

**Appeals from Marshall Circuit Court
(CV-14-900531)**

DONALDSON, Judge.

2181055 and 2190034

In appeal no. 2181055, Pilgrim's Pride ("the employer") appeals from a judgment ("the workers' compensation judgment") entered by the Marshall Circuit Court ("the trial court") in favor of David Lee Smith ("the employee") with respect to his claim for workers' compensation benefits. In appeal no. 2190034, the employee cross-appeals from a summary judgment ("the tort-of-outrage judgment") entered by the trial court in favor of the employer with respect to the employee's tort-of-outrage claim. Because an earlier appeal (appeal no. 2180626) filed by the employer seeking review of the workers' compensation judgment was still pending in this court when the trial court entered the tort-of-outrage judgment, the trial court lacked jurisdiction to enter the tort-of-outrage judgment and that judgment is void. Consequently, we dismiss appeal no. 2190034 with instructions to the trial court to vacate that judgment. Moreover, because the tort-of-outrage judgment is void, the employee's tort-of-outrage claim has not been adjudicated, and, therefore, the workers' compensation judgment is not a final judgment that will support an appeal. Therefore, we dismiss appeal no. 2181055.

Procedural History

2181055 and 2190034

In November 2014, the employee, who worked for the employer as a maintenance mechanic, sued the employer in the trial court, stating two claims in his verified complaint. In count one, as amended, the employee stated a claim for workers' compensation benefits based on allegations that, on July 10, 2013, while working within the line and scope of his employment with the employer, he had "stepped into a drain, fell back and heard his foot pop"; that he had notified the employer of the accident and injury; that he had requested that the employer refer him to a physician for medical treatment; that the employer had refused to refer him to a physician; that he had complained of foot pain to the employer's nurse on a daily basis and had requested that the employer refer him to a physician but the employer continued to refuse to do so; that the foot pain had caused the employee to develop an altered gait that subsequently caused the employee to suffer from lower back and leg pain; that, when the employer finally referred him to a physician, he was diagnosed with a broken foot; and that, because of his lower back pain, he had had to have surgery on his lower back.¹ In count two of his complaint, as amended, the

¹It appears that the employee actually suffered a broken ankle. Pursuant to the schedule of compensable injuries set out in the Alabama

2181055 and 2190034

employee stated a tort-of-outrage claim against the employer based on allegations that the employer had intentionally and recklessly refused to provide the employee with timely medical treatment for his July 10, 2013, injury, which, the employee asserted, proximately caused him to suffer "emotional stress that no reasonable person could expect to endure" Answering the employee's complaint, as amended, the employer denied that the employee was entitled to the relief he sought and asserted a number of affirmative defenses. In response to a motion filed by the employee, the trial court entered an order bifurcating the employee's claims for trial, assigning the employee's workers' compensation claim to the trial court's bench-trial docket and assigning the employee's tort-of-outrage claim to the trial court's jury-trial docket.

With respect to the workers' compensation claim, the parties stipulated, among other things, that the employee had sustained an injury to his right foot/ankle on July 10, 2013, that was compensable under the Alabama Workers' Compensation Act ("the Act"), § 25-5-1 et

Workers' Compensation Act, an ankle injury is treated as an injury to the foot under § 25-5-57(a)(3)a.14, Ala. Code 1975. See Denmark v. Industrial Mfg. Specialists, Inc., 98 So. 3d 541, 543 (Ala. Civ. App. 2012).

2181055 and 2190034

seq., Ala. Code 1975, See note 1, supra, and that the following were the issues to be tried:

- "A. Is the [employee's] alleged lower back injury compensable under the Alabama Workers' Compensation Act?
- "B. If the [employee's] alleged lower back injury is deemed compensable, what, if any, further obligation does the [employer] have in regard to medical treatment for the [employee's] alleged back injury?
- "C. Do the effects of the [employee's] right foot injury extend to and/or affect the use and efficiency of any other parts of his body?
- "D. What is the extent of the [employee's] disability as a result of his July 10, 2013 accident with the [employer]?
- "E. What, if any, compensation is the [employee] entitled to receive from the [employer], pursuant to § 25-5-57 of the Alabama Workers' Compensation Act?"

In September 2018, the trial court held a bench trial regarding the employee's workers' compensation claim. After the trial, the trial court, on December 6, 2018, entered the workers' compensation judgment in favor of the employee. That judgment did not contain any language indicating that it was intended to be a final judgment under Rule 54(b), Ala. R. Civ. P.

2181055 and 2190034

The employer filed a motion challenging the workers' compensation judgment, which the trial court denied on April 16, 2019. In its order denying that motion, the trial court stated: "The Worker's Compensation trial and Judgment is a final order." The employer then appealed from the workers' compensation judgment to this court on April 30, 2019; this court transferred that appeal to the supreme court, which transferred it back to this court pursuant to § 12-2-7(6), Ala. Code 1975. This court then docketed that appeal as appeal no. 2180626. This court concluded that the December 6, 2018, judgment was not a final judgment that would support an appeal. See Baugus v. City of Florence, 968 So. 2d 529, 532 (Ala. 2007) (holding that an order of a trial court that neither mentioned Rule 54(b) nor quoted Rule 54(b) did not indicate that the trial court intended to certify its order as a final judgment pursuant to Rule 54(b)). Therefore, on September 10, 2019, this court issued an order dismissing appeal no. 2180626 on the ground that the judgment appealed from was nonfinal. Pilgrim's Pride v. Smith, __ So. 3d __ (Ala. Civ. App. 2019) (table). This court subsequently issued its certificate of judgment in appeal no. 2180626 on September 30, 2019.

2181055 and 2190034

Before commencing appeal no. 2180626, the employer had filed a motion for a summary judgment with respect to the employee's tort-of-outrage claim based primarily on the ground that the exclusive-remedy provisions of the Act rendered the employer immune from tort liability. While appeal no. 2180626 was still pending in this court, the trial court, on June 17, 2019, entered the tort-of-outrage judgment. The employee filed a motion challenging the tort-of-outrage judgment, which the trial court denied. The employer then appealed from the workers' compensation judgment (appeal no. 2181055), and the employee cross-appealed from the tort-of-outrage judgment (appeal no. 2190034). Because the employee's cross-appeal was not within this court's appellate jurisdiction, we transferred that appeal to our supreme court, which transferred it back to this court pursuant to § 12-2-7(6).

Analysis

Although appeal no. 2180626 was ultimately dismissed on the ground that the workers' compensation judgment was not a final judgment, that appeal was still pending when the trial court entered the tort-of-outrage judgment on June 17, 2019. Because that appeal was still

2181055 and 2190034

pending on June 17, 2019, when the trial court entered the tort-of-outrage judgment, that appeal, even though premature, deprived the trial court of jurisdiction to enter the tort-of-outrage judgment on June 17, 2019, and, therefore, that judgment is void. See, e.g., Horton v. Horton, 822 So. 2d 431, 434 (Ala. Civ. App. 2001) ("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."). Accordingly, because the tort-of-outrage judgment is void, we dismiss appeal no. 2190034, albeit with instructions to the trial court to vacate the tort-of-outrage judgment. See, e.g., Kelton v. Caldwell, 280 So. 3d 1062, 1064 (Ala. Civ. App. 2019) (" 'A void judgment will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.' " (quoting Maclin v. Congo, 106 So. 3d 405, 408 (Ala. Civ. App. 2012), quoting in turn Reed v. White, 80 So. 3d 949, 953 (Ala. Civ. App. 2011))).

Because the tort-of-outrage judgment did not effectively dispose of the tort-of-outrage claim, the procedural posture of appeal no. 2181055

2181055 and 2190034

is effectively the same as the procedural posture of the employer's first appeal, i.e., appeal no. 2180626; that is, there is still no final judgment for this court to review because the employee's tort-of-outrage claim has not been adjudicated. See Horton. " 'When it is determined that an order appealed from is not a final judgment, it is the duty of the [appellate court] to dismiss the appeal ex mero motu.' " Horton, 822 So. 2d at 434 (quoting Young v. Sandlin, 703 So. 2d 1005, 1008 (Ala. Civ. App. 1997), quoting in turn Powell v. Republic Nat'l Life Ins. Co., 293 Ala. 101, 102, 300 So. 2d 359, 360 (1974)). Therefore, we dismiss appeal no. 2181055.

2181055 -- APPEAL DISMISSED.

2190034 -- APPEAL DISMISSED WITH INSTRUCTIONS.

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