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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Lorenzo Reese

v.

Leon Bolling, Angela Miree, and Antoinette Johnson

Appeal from Montgomery Circuit Court
(CV-18-303)

MOORE, Judge.

Lorenzo Reese appeals from a judgment of the Montgomery Circuit Court ("the trial court") dismissing a complaint filed by Reese against Leon Bolling, Angela Miree, and Antoinette

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Johnson.¹ We reverse the trial court's judgment and remand the case for further proceedings consistent with this opinion.

Procedural History

On June 5, 2018, Reese filed a complaint in the trial court, asserting, among other things, that he is a prisoner in the Alabama Department of Corrections ("the DOC") and is housed at the William E. Donaldson Mental Institution ("the institution"); that he has been diagnosed by one of the DOC's health-care providers with diabetes; that one of DOC's health-care providers had issued medical orders requiring Bolling, a warden III supervisor at the institution, and Miree, a warden II supervisor at the institution, to allow Reese to receive insulin injections before institutional special-diet meals and requiring Johnson, the chief steward and supervisor of the kitchen at the institution, to serve Reese institutional special-diet meals; and that Bolling, Miree, and Johnson had failed to comply with those medical orders. Reese also asserted in his complaint that he had filed a request with

¹In his complaint, Reese asserted his claims against Bolling, Miree, and "Chief Steward Johnson." It was later revealed that Antoinette Johnson is the chief steward of the kitchen at the William E. Donaldson Mental Institution where Reese is imprisoned. Accordingly, we refer to Johnson by her proper name for purposes of this appeal.

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Bolling, Miree, and Johnson that he be provided a religious diet based on his faith and that his request had been denied. Reese argued in his complaint that his rights, pursuant to the Eighth Amendment to the United States Constitution, to receive adequate medical treatment and medical management of his diabetes require Bolling, Miree, and Johnson to comply with the medical orders allowing for his insulin shots to be administered before his meals and to provide him with institutional special-diet meals, and, he asserted, Bolling, Miree, and Johnson had failed to comply with those orders. Reese also asserted that he has a right, pursuant to the First Amendment to the United States Constitution, to be served a diet compliant with the tenets of his faith and that he had been denied that right by Bolling, Miree, and Johnson.

In his prayer for relief, Reese requested compensation in the amount of \$1,000,000; punitive damages in the amount of \$1,000,000; a judgment declaring and affirming that Reese's rights under the Eighth Amendment to adequate medical treatment and management mandate that the medical orders issued by the DOC's health-care providers be carried out; a judgment declaring and affirming that the failure of Bolling,

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Miree, and Johnson to comply with the medical orders is a violation of his Eighth Amendment rights; a judgment declaring and affirming Reese's right under the First Amendment to freely exercise his religion with regard to his diet; a judgment declaring and affirming that the failure of Bolling, Miree, and Johnson to allow him to eat a diet conforming to his religious practices is a violation of the First Amendment; an injunction enjoining Bolling, Miree, and Johnson from failing to comply with the medical orders; and an injunction enjoining Bolling, Miree, and Johnson from denying Reese his right to eat a diet conforming to his religious practices.

On August 27, 2018, Reese filed a motion to amend his complaint, seeking to add a count asserting that he had been subjected to cruel and unusual punishment by Johnson, who, Reese argued, served contaminated meals in the institution, as well as a count asserting that additional defendants had denied him adequate medical treatment.² On September 11, 2018, the trial court entered an order setting the case for a hearing on October 9, 2018. On October 4, 2018, Bolling, Miree, and Johnson filed a Rule 12(b)(6), Ala. R. Civ. P.,

²Reese did not seek leave to add any parties as additional defendants in his motion to amend.

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motion to dismiss based on, among other things, immunity, lack of support for certain of Reese's claims, and mootness. They attached to their motion exhibits in support of their assertions, including records from the DOC regarding Reese's diet, Johnson's affidavit, and a "steward production worksheet." On October 15, 2018, the trial court entered an order indicating, among other things, that the matter had come before the court for a hearing on October 9, 2018, and that it had "carefully reviewed all pleadings and evidentiary materials" and dismissing Reese's claims against Bolling, Miree, and Johnson in their entirety, with prejudice.

Reese filed a motion seeking an extension of time to file an opposition to the motion to dismiss on October 18, 2018, in which he asserted, among other things, that he had not received a copy of the motion to dismiss until October 12, 2018. On November 13, 2018, Reese filed a motion to alter, amend, or vacate the trial court's judgment, asserting, among other things, that the trial court had erred in dismissing the action because he had been denied the opportunity to respond to the motion to dismiss. The trial court entered an order denying Reese's postjudgment motion on November 14, 2018.

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Reese filed his notice of appeal to the Alabama Court of Criminal Appeals. The Court of Criminal Appeals transferred the appeal to the Alabama Supreme Court, which, in turn, transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

Standard of Review

In their brief on appeal, Bolling, Miree, and Johnson cite the standard of review applicable to a dismissal pursuant to Rule 12(b)(6), Ala. R. Civ. P. Conversely, Reese argues on appeal that this court must review the trial court's judgment as though the motion to dismiss filed by Bolling, Miree, and Johnson had been converted into a motion for a summary judgment, pursuant to Rule 12(b), Ala. R. Civ. P., and that the standard of review applicable to a summary judgment, pursuant to Rule 56, Ala. R. Civ. P., should be used in the present appeal. "In order to determine the appropriate standard of review, we must first determine whether the motion[] to dismiss [was] converted to [a] motion[] for a summary judgment." Ex parte Price, 244 So. 3d 949, 954 (Ala. 2017).

Analysis

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Reese argues on appeal that the trial court erred in granting the motion to dismiss without giving him notice that the motion had been converted into a motion for a summary judgment and allowing him an opportunity to defend against the motion before entering a summary judgment in favor of Bolling, Miree, and Johnson. Bolling, Miree, and Johnson respond in their brief to this court that the trial court's judgment was entered pursuant to Rule 12(b)(6), rather than Rule 56. In support of their arguments that the trial court's judgment is due to be affirmed, however, they refer in their brief to exhibits that were attached to their motion to dismiss. They argue that "[t]here is nothing in the clerk's record to support" Reese's claim that their motion to dismiss was converted into a motion for a summary judgment. We disagree.

In its October 15, 2018, judgment, the trial court indicated that it had considered "all pleadings and evidentiary materials," along with arguments of counsel. Rule 12(b), Ala. R. Civ. P., provides, in pertinent part:

"If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as

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provided in Rule 56, [Ala. R. Civ. P.,] and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

In the present case, because exhibits were presented to the trial court along with the motion to dismiss and the trial court expressly indicated that it had considered those materials, the motion to dismiss was converted into a motion for a summary judgment. See Rule 12(b)(6) and Ex parte Price, 244 So. 3d at 954-55.

In Singleton v. Alabama Department of Corrections, 819 So. 2d 596 (Ala. 2001), our supreme court stated, in pertinent part:

"[I]f a motion under Rule 12(b)(6) [, Ala. R. Civ. P.,] is converted into a motion for summary judgment, both parties shall be given a reasonable opportunity to submit affidavits and other extraneous proofs to avoid a party being taken by surprise through conversion of the motion to dismiss to one for summary judgment. It is also clear that the spirit of Rule 56[, Ala. R. Civ. P.,] requires the same notice and hearing where the court contemplates summary judgment on its own initiative as it does when a party moves for summary judgment; i.e., ten days['] notice. The entry of summary judgment by a trial court, sua sponte, without giving to the party against whom such judgment is entered adequate and reasonable notice, as well as an opportunity to present evidence in

opposition, is prejudicial error requiring reversal.

"We agree with the following statement made by the United States Court of Appeals for the Fifth Circuit in its per curiam opinion in Davis v. Howard, [561 F.2d 565, 571 (5th Cir. 1977)]:

"We do not hold that a notice to convert a 12(b)(6) motion into a summary judgment must be by written order, but the record must adequately demonstrate that all counsel were aware of the intentions of the [trial] judge to treat the motion as converted, together with a reasonable opportunity afforded to the nonmoving party to present, by way of affidavit or otherwise, anything necessary to rebut the contention of the moving party. ...

"Today we hold that where matters outside the pleadings are considered in disposition of a Rule 12(b)(6) motion, so as to automatically convert it to one for summary judgment pursuant to Rule 56, or as one made sua sponte, the Rule 56 strictures of notice, hearing and admissibility into evidence are strictly required. ..."

819 So. 2d at 599-600 (quoting Hales v. First Nat'l Bank of Mobile, 380 So. 2d 797, 799 (Ala. 1980)) (some citations omitted). Our supreme court concluded in Singleton that,

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because the defendants in that case had attached an affidavit to their motion to dismiss and the circuit court had failed to exclude that affidavit from its consideration, the motion to dismiss had been converted into a motion for a summary judgment. 819 So. 2d at 600. Our supreme court determined that the plaintiff in that case was entitled to notice that the motion had been converted to a motion for a summary judgment, to the opportunity to be heard, and to such other procedural relief as is contemplated by Rule 56. 819 So. 2d at 600. Accordingly, our supreme court reversed the circuit court's judgment and remanded the case. 819 So. 2d at 600.

In the present case, the trial court expressly indicated in its judgment that it had considered the "evidentiary materials," which were attached to the motion to dismiss; thus, like in Singleton, the motion to dismiss filed by Bolling, Miree, and Johnson was converted into a summary-judgment motion. Also like in Singleton, Reese was entitled to notice that the motion to dismiss had been converted to a motion for a summary judgment, to the opportunity to be heard on the motion, and to such other procedural relief as is contemplated by Rule 56. Based on our supreme court's holding

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in Singleton and other similar cases, we reverse the trial court's order granting the motion to dismiss filed by Bolling, Miree, and Johnson, and remand the case for the trial court to proceed in a manner consistent with this opinion. We note, as our supreme court did in Singleton, that "an entry of a summary judgment for the defendants would not be proper until they have complied with the requirement of [Rule 56, Ala. R. Civ. P.,] that they submit a narrative summary of what they contend to be the undisputed material facts." 819 So. 2d at 600. Because we are reversing the trial court's judgment on the ground stated, we decline to further address any remaining arguments asserted by Reese on appeal.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Donaldson and Edwards, JJ., concur.

Hanson, J., concurs specially.

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HANSON, Judge, concurring specially.

I concur in the main opinion. I write specially to note the existence of a potential incentive for parties to label their dispositive motions as having been filed pursuant to Rule 12(b), Ala. R. Civ. P., governing preliminary dismissals rather than pursuant to Rules 12(c) and 56, Ala. R. Civ. P., respectively, governing judgments on the pleadings and summary judgments. Although Ala. Code 1975, § 12-19-71(a)(10), provides that a fee of \$50 is to be collected as to dispositive motions seeking judgments on the pleadings or summary judgments, no similar fee is to be collected under Alabama law with respect to motions seeking dismissal of a claim or an action. Because of this differential treatment of dispositive motions in our state's law governing costs of court, it falls to our learned trial bench to be ever wary of improper attempts by parties to seek judgments of dismissal under Rule 12(b) in lieu of properly filing motions under Rule 12(c) or Rule 56 that require the payment of filing fees.