

REL: November 19, 2021

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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State of Alabama

v.

Ryan Orlando

Appeal from Tuscaloosa Circuit Court
(CV-16-901286)

FRIDY, Judge.

The State of Alabama ("the State") appeals from a judgment of the Tuscaloosa Circuit Court ("the trial court") entered against the State

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regarding its petition seeking the forfeiture of \$11,800, a Ruger 9 millimeter pistol, a Sears Roebuck & Co. 22 caliber rifle, a Remington 870 tactical 12-gauge shotgun, a Husqvarna rifle with scope, a Remington 870 12-gauge shotgun, and a money counter (hereinafter referred to collectively as "the property"). We dismiss the appeal as untimely filed.

The record indicates that agents of the West Alabama Narcotics Task Force seized the property while executing a search warrant at Ryan Orlando's condominium in Tuscaloosa on November 18, 2016. The State filed its petition seeking forfeiture of the property on November 29, 2016. Orlando answered the complaint on January 17, 2017. A bench trial was held on May 20, 2020, and, on January 25, 2021, the trial court entered its judgment in favor of Orlando, ordering the State to return the property to him.

On February 12, 2021, the State filed a timely motion to alter, amend, or vacate the judgment. On February 23, 2021, the trial court entered an order denying the State's motion. Later that same day, the trial court entered a second order purporting to set aside the first order. The trial court did not offer an explanation regarding why it was

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attempting to set aside the first order. It did not, for example, indicate that the first order was mistakenly or erroneously entered. The trial court held a hearing on the postjudgment motion on March 29, 2021, and, on April 1, 2021, it entered a third order, purporting to deny the motion. The State filed its notice of appeal on April 20, 2021.

Before this court, Orlando argues that the trial court lost jurisdiction over this matter when it entered the first February 23 order denying the State's postjudgment motion. Therefore, he says, the second order purporting to set aside the first February 23 order, as well as the third order purporting to deny the postjudgment motion, are void. Thus, Orlando asserts, the notice of appeal had to have been filed within forty-two days of February 23, 2021, i.e., by April 6, 2021. See Rule 4(a)(1), Ala. R. App. P. We agree.

In Paris v. Estate of Williams, 769 So. 2d 321, 322 (Ala. Civ. App. 2000), the circuit court in that case entered an order on October 6, 1999, denying Sarah Paris's motion to alter, amend, or vacate the judgment that it had entered in favor of the estate of Frank Williams. On October 20, 1999, the circuit court entered an order ex mero motu purporting to set

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aside the October 6 order and to set the postjudgment motion for argument. After the hearing, the circuit court entered an order on November 30, 1999, purporting to reinstate the original judgment. Id. Paris filed a notice of appeal on January 7, 2000.

This court dismissed Paris's appeal as untimely, concluding that, under Rule 4(a)(1), Ala. R. App. P., Paris was required to have filed the notice of appeal within forty-two days of October 6, 1999. We explained:

"Our conclusion is not altered by the fact that the trial court entered an order on October 20, 1999, purporting to 'set aside' the denial of Paris's postjudgment motion. The Alabama Supreme Court recently considered whether a trial court has the authority to revisit its own order denying a Rule 59 [Ala. R. Civ. P.,] postjudgment motion, and it concluded that the trial court has no such authority. Ex parte Allstate Life Ins. Co., 741 So. 2d 1066 (Ala.1999)."

769 So. 2d at 323.

We dismissed the appeal in Woodget v. State Department of Human Resources ex rel. Woodget, 184 So. 3d 409 (Ala. Civ. App. 2015), under similar circumstances. In Woodget, we held that when the circuit court in this case denied a postjudgment motion on October 15, 2014, it lost jurisdiction to reconsider that motion by holding a hearing and entering

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a second order denying the postjudgment motion. The notice of appeal would have been timely based on the entry date of the second order, but, because the notice of appeal was filed more than forty-two days after October 15, 2014, we dismissed the appeal as untimely. Id. at 410. This court noted that our supreme court " 'has repeatedly held that after a trial court denies a Rule 59 [Ala. R. Civ. P.] post-judgment motion, the trial court no longer has jurisdiction over the case and the aggrieved party's only remedy is to appeal.' " Id. (quoting Ex parte Allstate Life Ins. Co., 741 So. 2d 1066, 1071 (Ala. 1999)). In support, as in Paris, we relied on Ex parte Allstate, in which our supreme court observed that "the rule that a trial court cannot ... 'reconsider' its previous order denying a post-judgment motion is more than a mere 'technicality' under the Alabama Rules of Civil Procedure, but is based on the court's loss of jurisdiction over the case." 741 So. 2d at 1070.

In this case, the trial court lost jurisdiction over the matter when it entered the first order denying the State's motion to alter, amend, or vacate the judgment. Thus, its second order purporting to set aside the first order and its third order purporting to deny the postjudgment motion

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a second time are nullities. Hargrove v. Hargrove, 65 So. 3d 950, 952 (Ala. Civ. App. 2010). Rule 4(a)(3), Ala. R. App. P., provides that the filing of a postjudgment motion under Rule 59, Ala. R. Civ. P., suspends the time for filing a notice of appeal and that "the full time fixed for filing a notice of appeal shall be computed from the date of the entry in the civil docket of an order granting or denying such motion." In this case, the order denying the State's postjudgment motion was entered on February 23, 2021, and the State was required to file its notice of appeal by April 6, 2021. See Rule 4(a)(1). Because the notice of appeal was not filed until April 20, 2021, the appeal is untimely.

Rule 2(a)(1), Ala. R. App. P., provides that "[a]n appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court." Because we have concluded that the State's notice of appeal was not timely filed, we dismiss the appeal.

See Paris, 769 So. 2d at 323-24.

APPEAL DISMISSED.

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