

REL: August 9, 2019

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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

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L.C. and B.C.

v.

Shelby County Department of Human Resources  
and Alabama Department of Human Resources

Appeal from Montgomery Circuit Court  
(CV-17-901751)

MOORE, Judge.

L.C. and B.C. appeal from a judgment entered by the Montgomery Circuit Court affirming an administrative order of the Alabama Department of Human Resources ("the Alabama DHR") that upheld indicated findings of child abuse and neglect made by the Shelby County Department of Human Resources ("the

2180442

Shelby County DHR") against L.C. and B.C. We dismiss the appeal.

#### Procedural History

B.C. is the father of two minor children, C.C. and J.C., born of his marriage to V.R., which ended in divorce. L.C. is the current wife of B.C. and the stepmother of C.C. and J.C. In 2015, the Shelby County DHR received reports that L.C. and B.C. had abused C.C. After an investigation, the Shelby County DHR determined that the abuse was "indicated," meaning that "credible evidence and professional judgment substantiates that an alleged perpetrator is responsible for child abuse or neglect." Ala. Code 1975, § 26-14-8(a)(1). B.C. and L.C. timely requested an administrative hearing to contest the findings. See Ala. Admin. Code (Dep't of Human Res.), r. 660-5-34-.08(1) (affording a person who has been indicated for child abuse and neglect a right to a hearing to contest the findings).

The administrative hearing took place on September 15, 2017, before an administrative-law judge ("the ALJ"), in a proceeding styled as "Before the State of Alabama Department of Human Resource Shelby County." David W. Smith, an

2180442

assistant attorney general for the "Department of Human Resources Montgomery Regional Legal Office," acted as the attorney for the Shelby County DHR in those proceedings. On October 9, 2017, the ALJ issued an administrative order upholding the indicated findings.

On November 8, 2017, B.C. and L.C. electronically filed a notice of appeal that was styled "Before the State of Alabama Department of Human Resource Shelby County" and in which they certified that they had served a copy of the document on Smith "by electronic filing" on that same date. Also, on that same date, L.C. and B.C. filed electronically in the Montgomery Circuit Court a "Petition for Trial De Novo or, in the alternative, Petition for Judicial Review Pursuant to Section 41-22-20 and Petition for Writ of Certiorari," naming the Alabama DHR as the respondent. B.C. and L.C. amended their petition to add the Shelby County DHR as a respondent. The petition and amended petition requested service by sheriff on

"David W. Smith, Assistant Attorney General  
Department of Human Resources  
3030 Mobile Highway  
Montgomery, Alabama 36108"

and

2180442

"Shelby County Department of Human Resources  
987 Highway 90  
Columbiana, Alabama 35051."

The record indicates that the Shelby County DHR was served on November 20, 2017, but that Smith was never served.

On December 22, 2017, Elizabeth Hendrix, who identified herself as "Assistant Attorney General State of Alabama Department of Human Resources," filed a notice of appearance as counsel for the Shelby County DHR. No attorney ever appeared specifically for the Alabama DHR. On October 30, 2018, a final judgment was entered by the circuit court, affirming the ALJ's October 9, 2017, decision. The circuit court denied a postjudgment motion filed by B.C. and L.C. on January 28, 2019. B.C. and L.C. filed a notice of appeal on March 4, 2019, naming the Shelby County DHR and the Alabama DHR as appellees.

#### Discussion

Section 41-22-20(a), Ala. Code 1975, a portion of the Alabama Administrative Procedure Act ("the AAPA"), § 41-22-1 et seq., Ala. Code 1975, provides that a party who has been aggrieved by the final decision of an administrative agency may, upon exhausting all administrative remedies, obtain

2180442

judicial review of that decision. The statutory right to judicial review through the AAPA forecloses review of a final decision issued by an administrative agency by any other means, including by common-law writ of certiorari. See Ex parte Worley, 46 So. 3d 916, 921-22 (Ala. 2009). The AAPA further defines the process by which a party may properly invoke the jurisdiction of a circuit court to conduct a judicial review of a final decision issued by an administrative agency, and that process must be strictly followed. Id.

Subsection 41-22-20(b) provides, in pertinent part:

"All proceedings for review may be instituted by filing of notice of appeal or review and a cost bond with the agency to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the agency or the court on a showing of substantial hardship."

Based on the plain language of § 41-22-20(b), a party must "file" a notice of appeal with the administrative agency that issued the final decision at issue as a preliminary step to invoking the jurisdiction of a circuit court to conduct a judicial review of that decision. See Ex parte Alabama State Pers. Bd., 90 So. 3d 766, 769 (Ala. Civ. App. 2012).

2180442

The AAPA does not set forth the manner in which a notice of appeal may be filed, and no regulation promulgated by the Alabama DHR specifically addresses the method for perfecting the filing of a notice of appeal with that agency or any of the county departments of human resources. Generally speaking, the term "file," in the legal context, refers to the "delivery of a document to a specified officer for permanent keeping as a notice or record in the place where his official records and papers are kept." Turner v. Alabama State Tenure Comm'n, 523 So. 2d 401, 403 (Ala. Civ. App. 1987), aff'd, Ex parte Turner, 523 So. 2d 403 (Ala. 1988). This court has broadly held that a notice of appeal cannot be filed through the electronic-filing system established for the Alabama court system. See Alabama Dep't of Revenue v. Frederick, 166 So. 3d 123, 125 (Ala. Civ. App. 2014) (discussing electronic filing of documents in the court system and stating that "at no time since the institution of the electronic-filing system has a notice of appeal been a document capable of being filed electronically").<sup>1</sup> Furthermore, this court has held that a

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<sup>1</sup>We note that our supreme court has now amended certain rules of appellate procedure to allow for the electronic filing of a notice of appeal with the trial-court clerk effective October 1, 2019, but those amendments do not apply

2180442

notice of appeal cannot be filed through an e-mail communication to an employee of an agency. See Matthews v. City of Mobile, 182 So. 3d 547 (Ala. Civ. App. 2014).

In this case, the record shows that B.C. and L.C. served their notice of appeal on David W. Smith, the attorney for the Shelby County DHR in the administrative proceeding, through electronic filing. B.C. and L.C. have further informed this court through letter briefs that they sent the notice of appeal to Smith in an e-mail communication. Assuming, without deciding, that Smith was an appropriate person to receive the notice of appeal on behalf of the Alabama DHR and the Shelby County DHR, it remains that, based on Frederick and Matthews, B.C. and L.C. did not properly file their notice of appeal because they notified Smith of their intent to appeal only electronically.

This court has excused the failure of a party aggrieved by a final administrative decision to properly and timely file a notice of appeal with the agency that issued the decision when the party has served the agency with the petition for judicial review within the time allotted for filing the notice

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to this case.

2180442

of appeal. See Eley v. Medical Licensure Comm'n of Alabama, 904 So. 2d 269 (Ala. Civ. App. 2003). The AAPA provides that a notice of appeal from a final decision issued by an administrative agency must be filed with the agency that made the final decision "within 30 days after the receipt of the notice of or other service of the final decision of the agency upon the petitioner." Ala. Code 1975, § 41-22-20(d). Thus, if B.C. and L.C. served the petition for judicial review on the agency within 30 days of their receipt of the ALJ's decision, the petition for judicial review could serve as a substitute for the notice of appeal.

Assuming, without deciding, that service of the petition for judicial review on the Shelby County DHR alone would have been sufficient, the record does not disclose whether B.C. and L.C. served the Shelby County DHR within 30 days of the date they were notified of the decision of the ALJ. The record does not show when B.C. and L.C. received notice of the ALJ's decision or otherwise indicate that their service of the petition for judicial review on the Shelby County DHR on November 20, 2017, was within 30 days of the date they received notice of the ALJ's decision. The jurisdiction of a



2180442

circuit court to hear an appeal from a final decision of an administrative agency is purely statutory, and the existence of facts creating the court's jurisdiction may not be inferred, but must affirmatively appear in the record. See Secretary of Alabama Law Enf't Agency v. Ellis, [Ms. 2180087, March 22, 2019] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2019). Accordingly, we must conclude that B.C. and L.C. did not file their petition for judicial review timely so as to excuse their failure to properly file a notice of appeal.

"[A] court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu." C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003). "We are obliged to recognize an absence of subject-matter jurisdiction obvious from a record, petition, or exhibits to a petition before us." Ex parte Norfolk S. Ry. Co., 816 So. 2d 469, 472 (Ala. 2001). This court concludes that, for the foregoing reasons, the circuit court lacked jurisdiction over the petition for judicial review filed by B.C. and L.C. "A judgment entered by a court that lacks subject-matter jurisdiction is void." S.B.U. v. D.G.B., 913 So. 2d 452, 455 (Ala. Civ. App. 2005). A void

2180442

judgment will not support an appeal. Tidwell v. State Ethics Comm'n, 599 So. 2d 12, 12 (Ala. 1992). We, therefore, dismiss this appeal as having been taken from a void judgment.

APPEAL DISMISSED.

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