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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

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L.T.J., Jr.

v.

S.S., on behalf of C.S., a minor child

Appeal from Dale Circuit Court
(DR-18-186)

MOORE, Judge.

L.T.J., Jr., appeals from a judgment entered by Dale Circuit Court ("the trial court") in a protection-from-abuse

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action commenced by S.S., on behalf of C.S., a minor child. We dismiss the appeal.

On October 31, 2018, S.S. filed, on behalf of her daughter, C.S. ("the child"), a petition for protection from abuse against L.T.J., Jr. After a trial, the trial court entered a final protection-from-abuse judgment against L.T.J., Jr., on November 26, 2018. On November 27, 2018, L.T.J., Jr., filed a postjudgment motion requesting the trial court to reconsider the November 26, 2018, judgment; that motion was denied the same day.

On December 20, 2018, S.S. filed a motion requesting that the trial court amend its judgment to prevent S.E. and "anyone affiliated with [Grassroots Tennis Association] or IDA, including teammates and teammates parents," from contacting the child and to order the removal of "any photos of [the child], her name, and the video they have posted of 'the child effected by racism' to be pulled off their website and ... to remove the post on YouTube [an Internet video-streaming service] as well." On December 21, 2018, the trial court purported to set the motion to amend filed by S.S. for a hearing to be held on February 11, 2019. On December 30,

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2018, L.T.J., Jr., filed an "Expedited Motion to Reconsider Hearing & Protection Order."¹

On January 2, 2019, upon the motion of L.T.J., Jr., the trial court purported to grant an extension of time to appeal until after the hearing scheduled on February 11, 2019. The hearing was subsequently continued to March 11, 2019. On March 4, 2019, L.T.J., Jr., filed his notice of appeal to this court. On March 12, 2019, the trial court purported to amend the protection-from-abuse judgment as requested by S.S. in her December 20, 2018, motion.

"Although the parties to this appeal have not challenged our appellate jurisdiction, we must consider whether we have jurisdiction over this appeal, because 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Hopper v. Sims, 777 So. 2d 122, 124 (Ala. Civ. App. 2000) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997), quoting in turn Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)). "The

¹To the extent that that motion was filed pursuant to Rule 59, Ala. R. Civ. P., it was untimely and did not toll the time for filing a notice of appeal. See B.R. v. F.H., 962 So. 2d 882 (Ala. Civ. App. 2007).

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failure to file a notice of appeal within the time provided in Rule 4, [Ala. R. App. P.], is a jurisdictional defect and will result in a dismissal of the appeal." Buchanan v. Young, 534 So. 2d 263, 264 (Ala. 1988). Because the appeal was from a final protection-from-abuse judgment, the 42-day period for filing a notice of appeal applies. See, e.g., Placey v. Placey, 51 So. 3d 374, 376 n.3 (Ala. Civ. App. 2010). Therefore, unless the time to appeal was tolled, L.T.J., Jr., had 42 days from the entry of the November 26, 2018, judgment within which to file his notice of appeal.²

Initially, we note that the time to appeal was tolled by the postjudgment motion filed by L.T.J., Jr., on November 27, 2018. That motion was denied that same day. See Rule 59.1, Ala. R. Civ. P. Subsequently, on December 20, 2018, S.S. filed a motion that, in substance, sought to amend her petition for protection from abuse to add additional parties and additional requests for relief against those parties.

²This court called for letter briefs on the issue of timeliness, and the court initially allowed the appeal to proceed. However, the "denial of a motion to dismiss an appeal does not preclude reconsideration of the fundamental question of appellate jurisdiction after an appellate court has had an opportunity to review the record." Smith v. Smith, 919 So. 2d 315, 316 n.1 (Ala. Civ. App. 2005).

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However, "a trial court has no jurisdiction to entertain a motion to amend a complaint to add new claims or new parties after a final judgment has been entered, unless that 'judgment is first set aside or vacated' pursuant to the state's rules of civil procedure." Faith Props., LLC v. First Commercial Bank, 988 So. 2d 485, 490 (Ala. 2008). Because in the present case the trial court at no time "'set aside or vacated'" its November 26, 2018, judgment, it had no jurisdiction to entertain S.S.'s motion to amend, id., and, thus, her motion did not toll the time for filing a notice of appeal after the entry of the postjudgment order on November 27, 2018. Additionally, we note that "a judgment entered without subject-matter jurisdiction is void." K.R. v. D.H., 988 So. 2d 1050, 1052 (Ala. Civ. App. 2008). Because the trial court lacked jurisdiction to entertain S.S.'s motion to amend, the trial court's March 12, 2019, order purporting to amend the protection-from-abuse judgment is void and must be set aside.

Based on the foregoing, we conclude that L.T.J., Jr., had 42 days from the denial of his postjudgment motion on November 27, 2018, or until January 8, 2019, to file his notice of appeal. See Rule 4(a)(3), Ala. R. App. P. ("In cases where

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post-judgment motions are filed, 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."). However, the notice of appeal in this case was not filed until March 4, 2019.

With regard to the trial court's attempt to extend the time for filing the notice of appeal, we note that

"[t]he juvenile court is authorized, upon a showing of 'excusable neglect based on a failure of the party to learn of the entry of the judgment or order,' Rule 77(d), Ala. R. Civ. P., to extend the time to file notice of appeal up to a maximum of 30 days from the original deadline for filing a notice of appeal."

F.G. v. State Dep't of Human Res., 988 So. 2d 555, 557 (Ala. Civ. App. 2007). In this case, however, the motion to extend the time to appeal was not based on a showing of "'excusable neglect based on a failure of the party to learn of the entry of the judgment or order,'" id., which is the only basis upon which the trial court could have extended the time for appealing. Therefore, we conclude that that motion was an improper motion under Rule 77(d), Ala. R. Civ. P., and, thus, the trial court was without jurisdiction to extend the time for taking an appeal. Id.

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Based on the foregoing, we conclude that this appeal was untimely filed. Therefore, this court is without jurisdiction to entertain the appeal and must dismiss it. Buchanan, 534 So. 2d at 264. The trial court is instructed to vacate the March 12, 2019, order.

All pending motions are denied as moot.

APPEAL DISMISSED WITH INSTRUCTIONS.

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