

Rel: August 8, 2019

**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

SPECIAL TERM, 2019

---

2180502

---

**James Darrell McDaniel**

v.

**State of Alabama ex rel. Brian C.T. Jones, District  
Attorney, 39th Judicial Circuit**

**Appeal from Limestone Circuit Court  
(CV-17-900054)**

THOMPSON, Presiding Judge.

James Darrell McDaniel, an inmate incarcerated with the Alabama Department of Corrections at the time this appeal was

2180502

filed, appeals from an order of the Limestone Circuit Court ("the trial court") denying his request for the return of certain seized property in this forfeiture action filed by District Attorney Brian C.T. Jones on behalf of the State of Alabama ("the State").

The facts alleged in the forfeiture complaint indicate that on January 30, 2017, deputies from the Limestone County Sheriff's Department seized a Nissan Maxima automobile ("the Nissan") and \$1,066 in United States currency pursuant to an interview with McDaniel and a related search. The complaint seeking the condemnation and forfeiture of the Nissan and the currency was filed in the trial court on February 8, 2017. The case-action summary that appears on the State Judicial Information System states, regarding service: "sheriff issued: 02/08/2017 to D001," that is, to McDaniel. There is a subsequent notation on the case-action summary indicating "service return" on March 13, 2017. The case-action summary then states: "Return of other on 03/03/2017 for D001." Other than the notations on the case-action summary, no other documentary evidence regarding service is contained in the record on appeal.

2180502

According to the record, once the forfeiture complaint was filed, nothing occurred in this action for two years. The case-action summary indicates that McDaniel was eventually served on January 29, 2019. On February 8, 2019, McDaniel filed a motion for enlargement of time in which to file a response to the complaint. The trial court denied the motion that same day. On February 15, 2019, McDaniel filed a motion seeking the return of the Nissan and the currency. The State did not respond to that motion, and the trial court denied that motion on February 26, 2019. On March 27, 2019, McDaniel appealed from the order denying the motion to return the property.

On April 3, 2019, McDaniel filed in the trial court a "motion for a pre-seizure hearing." On April 4, 2019, the trial court entered an order purporting to deny the motion for a "pre-seizure hearing." However,

"the filing of a notice of appeal divests the trial court of jurisdiction over an action. Portis v. Alabama State Tenure Comm'n, 863 So. 2d 1125, 1126 (Ala. Civ. App. 2003) (quoting Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982)) ('It is well settled that "[o]nce an appeal is taken, the trial court loses jurisdiction to act except in matters entirely collateral to the appeal.>'); see also Veteto v. Yocum, 792 So. 2d 1117, 1119 (Ala. Civ. App. 2001) (explaining that, once an appeal is

2180502

taken, a trial court may not enter a judgment or order in an action until such time as the appellate court issues its certificate of judgment)."

Ex parte Marshall Cty. Dep't of Human Res., 252 So. 3d 1105, 1107 n.2 (Ala. Civ. App. 2017). Thus, the April 4, 2019, order is a nullity.

On appeal, McDaniel contends that he was not served with the forfeiture complaint and that the complaint was not timely filed. What has occurred in this action is difficult if not impossible to discern based on the record before us, which consists solely of the clerk's record. There is no indication that a forfeiture hearing was held, and no judgment condemning and forfeiting the property is contained in the record.<sup>1</sup> The State did not favor this court with a brief on appeal, which may have assisted in clarifying the proceedings below.

It is well settled that "an appellate court is limited to a review of the record, and the record cannot be changed, altered, or varied on appeal by statements in briefs of counsel." Quick v. Burton, 960 So. 2d 678, 680-81 (Ala. Civ. App. 2006) (citing Wal-Mart Stores, Inc. v. Goodman, 789 So. 2d 166, 176 (Ala. 2000), and Gotlieb v. Collat, 567 So. 2d 1302,

---

<sup>1</sup>No explanation appears in the record as to why no action was taken in this matter for two years.

2180502

1304 (Ala. 1990)). As mentioned, the record does not contain a judgment of condemnation and forfeiture. "'A final judgment" is a terminal decision by a court of competent jurisdiction which demonstrates there has been a complete adjudication of all matters in controversy between the litigants within the cognizance of that court.' Wilson v. Wilson, 736 So. 2d 633, 634 (Ala. Civ. App. 1999) (citation omitted)." Plantation S. Condo. Ass'n, Inc. v. Profile Mgmt. Corp., 783 So. 2d 838, 840 (Ala. Civ. App. 2000). Because there is no judgment on the State's forfeiture claim, there has not been a complete adjudication on the matter in controversy. Thus, no final judgment has been entered in this action.

"[E]xcept in limited circumstances not applicable here, this court does not have jurisdiction to consider an appeal taken from a nonfinal judgment. See, e.g., James v. Rane, 8 So. 3d 286, 288 (Ala. 2008); Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 362 (Ala. 2004); see also Devane v. Smith, 216 Ala. 177, 178, 112 So. 837, 837 (1927) ('Appeal is statutory, and the question [of the appealability of an interlocutory order] is a jurisdictional one.'). "'When it is determined that an order appealed from is not a final judgment, it is the duty of the [appellate] [c]ourt to dismiss the appeal ex mero motu.'" Dzwonkowski, 892 So. 2d at 362 (quoting Tatum v. Freeman, 858 So. 2d 979, 980 (Ala. Civ. App. 2003), quoting in turn Powell v. Republic Nat'l Life Ins. Co., 293 Ala. 101, 102, 300

2180502

So. 2d 359, 360 (1974))."

Denault v. Federal Nat'l Mortg. Ass'n, [Ms. 2170591, April 5, 2019] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2019).

Because an appeal will not lie from a nonfinal judgment, we dismiss McDaniel's appeal. Kirksey v. Johnson, 166 So. 3d 633, 643 (Ala. 2014).

APPEAL DISMISSED.

Moore, Donaldson, Edwards, and Hanson, JJ., concur.