

REL: May 7, 2019

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180518

**Ex parte Avondale Gardens, LP,
d/b/a Avondale Gardens Apartments**

PETITION FOR WRIT OF MANDAMUS

(In re: Avondale Gardens, LP v. Essex Parker et al.)

(Jefferson Circuit Court, CV-18-904887)

MOORE, Judge.

Avondale Gardens, LP, doing business as Avondale Gardens Apartments ("Avondale"), petitions this court for a writ of mandamus directing the Jefferson Circuit Court ("the circuit

2180518

court") to dismiss the appeal filed by Essex Parker, Felicia Parker, Devonte Bishop, Pamela Lambert, and Breanna Bishop (hereinafter referred to collectively as "the defendants") from a judgment entered by the Jefferson District Court ("the district court") in an unlawful-detainer and ejectment action filed by Avondale. We grant the petition and issue the writ.

Procedural History

On October 15, 2018, Avondale filed a complaint in the district court alleging unlawful-detainer and ejectment claims against the defendants.

On December 10, 2018, the district court entered a judgment, stating, in pertinent part:

"Judgment by trial is hereby entered in favor of [Avondale] and against [the d]efendants on the Unlawful Detainer. The Court hereby orders and adjudges that the following property, as described in the complaint be restored to [Avondale]:

".....

"Rent is ascertained to be \$708.00 per month due on the 1st of the month. Rent in the amount of \$1416.00 has accrued since date of filing to date.

"Pursuant to Rule 54(b) [, Ala. R. Civ. P.,] and in order to make this a final order, the Court specifically finds that there is no just reason for delay and specifically directs the immediate entry of judgment as to the defendants for property sued

2180518

for and costs of court with leave to prove damages against the defendants on the money claim.

"Order announced in open Court."¹

On December 20, 2018, the defendants filed their notice of appeal to the circuit court.

On January 2, 2019, Avondale filed in the circuit court a motion to dismiss the appeal on the basis that the circuit court lacked jurisdiction because the appeal was untimely. The defendants filed a response to the motion to dismiss on January 5, 2019, and, on January 7, 2019, Avondale filed a reply to the defendants' response. On April 2, 2019, the circuit court set the case for a trial to be held on May 10, 2019. Avondale then filed its mandamus petition.

Standard of Review

"We note that a lack of subject-matter jurisdiction may be raised at any time, and that the question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Johnson, 715 So. 2d 783, 785 (Ala. 1998).' Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000). Further,

"[t]his Court has consistently held that the writ of mandamus is an extraordinary and drastic writ and that a

¹That judgment was a final judgment capable of being appealed. See Radcliff v. Hall Hous. Invs., Inc., 47 So. 3d 1258 (Ala. Civ. App. 2010).

2180518

party seeking such a writ must meet certain criteria. We will issue the writ of mandamus only when (1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked. Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997). Because mandamus is an extraordinary remedy, the standard by which this Court reviews a petition for the writ of mandamus is to determine whether the trial court has clearly abused its discretion. See Ex parte Rudolph, 515 So. 2d 704, 706 (Ala. 1987).'

"Ex parte Flint Constr. Co., 775 So. 2d at 808."

Ex parte Alabama Dep't of Labor, 236 So. 3d 901, 904 (Ala. Civ. App. 2017).

Discussion

In Avondale's petition, it argues that the circuit court should have granted its motion to dismiss the appeal. Although the materials before us do not indicate that the circuit court entered an order denying the motion to dismiss, we conclude that the circuit court's order setting the case for a trial impliedly denied Avondale's motion to dismiss.

Section 6-6-350, Ala. Code 1975, which governs appeals from judgments entered in unlawful-detainer actions, provides, in pertinent part:

2180518

"Any party may appeal from a judgment entered against him or her by a district court to the circuit court at any time within seven days after the entry thereof, and appeal and the proceedings thereon shall in all respects, except as provided in this article [i.e., Title 6, Chapter 6, Article 8, Ala. Code 1975], be governed by this code relating to appeal from district courts."

In their response to the mandamus petition, the defendants assert that, pursuant to Ala. Code 1975, § 12-12-70, they had 14 days to appeal from the district court's judgment. We note, however, that § 12-12-70 is the general statutory provision concerning appeals from district courts to circuit courts, whereas § 6-6-350 is the specific statute concerning appeals from district courts to circuit courts in unlawful-detainer actions. "Special statutory provisions on specific subjects control general provisions on general subjects." Baldwin Cty. v. Jenkins, 494 So. 2d 584, 588 (Ala. 1986). Moreover, Ala. Code 1975, § 35-9A-461(d), provides, in pertinent part: "Notwithstanding subsection (a) of Section 12-12-70, any party may appeal from an eviction judgment entered by a district court to the circuit court at any time within seven days after the entry thereof." (Emphasis added.) We therefore conclude that the seven-day period for filing a notice of appeal set forth in §§ 6-6-350 and 35-9A-461(d)

2180518

applies in this case, and, therefore, the defendants' appeal was untimely filed.

We note that the defendants asserted in the circuit court and now assert to this court that they were entitled to relief pursuant to Rule 60(b)(1), Ala. R. Civ. P. Specifically, they assert that the district court informed them that they had 14 days to appeal from the district court's judgment. We note, however, that the materials before us do not support that assertion and that, even if they did, "a mistake of law is not a ground for relief under Rule 60(b)(1)." Wal-Mart Stores, Inc. v. Green, 740 So. 2d 412, 413 (Ala. Civ. App. 1999).

The defendants also assert that they did not receive notice of the district court's judgment. However, Rule 77(d), Ala. R. Civ. P., which applies in district courts, see Rule 77(dc) ("Rule 77 applies in the district courts and its references to 'circuit' shall be treated as references to 'district.'"), provides, in pertinent part:

"Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except that upon a showing of excusable neglect based on a failure of the party to learn of the entry of the judgment or order the circuit court in any action may extend the time for appeal not exceeding thirty (30) days from the

2180518

expiration of the original time now provided for appeals in civil actions."

There is no indication that the defendants requested an extension from the district court pursuant to Rule 77. Therefore, we conclude that the defendants' arguments on this point have no merit.

Conclusion

Based on the foregoing, we grant Avondale's petition and issue a writ of mandamus directing the circuit court to dismiss the appeal.

PETITION GRANTED; WRIT ISSUED.

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