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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

2180977

Vanessa Imelda Thompson

v.

State of Alabama ex rel. Errek Jett, District Attorney of
Lawrence County

Appeal from Lawrence Circuit Court
(CV-16-900079)

DONALDSON, Judge.

Vanessa Imelda Thompson seeks appellate review of the order of the Lawrence Circuit Court ("the trial court") purportedly denying her motion filed pursuant to Rule 60(b), Ala. R. Civ. P. Thompson, however, prematurely filed her

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notice of appeal before the entry of the order purportedly denying her Rule 60(b) motion. Because the filing of the notice of appeal divested the trial court of jurisdiction to enter the order, the appeal is not taken from an appealable order. Therefore, we have no jurisdiction over the appeal, and, thus, we dismiss the appeal.

Facts and Procedural History

On June 12, 2016, an officer with the Town Creek Police Department stopped Thompson while she was driving an automobile. Thompson was arrested on various charges, and the automobile was seized. On June 24, 2016, the State of Alabama, on the relation of Errek Jett, the District Attorney of Lawrence County, filed a complaint in the trial court pursuant to § 20-2-93, Ala. Code 1975, seeking the forfeiture of the automobile. The complaint was based on the allegation that the automobile was used to facilitate illegal-drug activity in violation of the controlled-substance laws of Alabama. Thompson filed an answer denying that allegation. On November 27, 2017, the trial court conducted an ore tenus hearing, and on November 29, 2017, the trial court entered a judgment in favor of the State on its forfeiture claim. Thompson appealed

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from that judgment to this court. On September 14, 2018, this court affirmed the judgment, without an opinion. See Thompson v. State (No. 2170491), 285 So. 3d 808 (Ala. Civ. App. 2018) (table).

On March 20, 2019, Thompson filed a motion in the trial court. She described the motion as being filed pursuant to Rule 60(b)(4) and (6), Ala. R. Civ. P. In her motion, Thompson argued that the forfeiture of her automobile was an excessive punishment under the Eighth Amendment to the United States Constitution. On April 2, 2019, the trial court entered an order setting a hearing date for Thompson's Rule 60(b) motion. The record indicates that the trial court held a hearing on April 30, 2019, and received oral arguments regarding Thompson's Rule 60(b) motion. This court has not been provided with a transcript of that hearing.

On July 29, 2019, Thompson filed in the trial court a document entitled "REQUEST FOR A RULING AND NOTICE OF APPEAL MOTION TO THE COURT OF CIVIL APPEALS OF ALABAMA TO PROCEED IN FORMA PAUPERIS & SUPPORTING FACTS & AFFIDAVIT TO PROCEED IN FORMA PAUPERIS; REQUEST TO DETERMINE DATE NOTICE OF APPEAL STARTED; THE EFFECT THERE ON." (Capitalization in original.)

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In addition to various requests, Thompson stated that "I am giving Notice of Appeal pursuant to ... Rule 4, [Ala. R. App. P.,] and [Rule 60(b)(4), (5), and (6), Ala. R. Civ. P.,] that VANESSA IMELDA THOMPSON appeals to the Court of Civil Appeals of the State of Alabama" (Capitalization in original.) On August 26, 2019, the trial court entered an order purportedly denying Thompson's Rule 60(b) motion.

Discussion

In her brief on appeal, Thompson states that the appeal is taken from the denial of her Rule 60(b) motion. Among other arguments, Thompson contends that the forfeiture of her automobile was an excessive punishment under the Eighth Amendment to the United States Constitution. Before we can decide the issues raised by Thompson on appeal, however, we must first determine whether we have jurisdiction over the appeal. Bryant v. Flagstar Enters., Inc., 717 So. 2d 400, 402 (Ala. Civ. App. 1998). Although the parties have not raised the jurisdiction of this court as an issue on appeal, "'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ.

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App. 1997) (quoting Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)).

"'Unless otherwise provided by law, appeals lie only from final orders or judgments.'" C.E.C. v. C.W.C., 202 So. 3d 338, 340 (Ala. Civ. App. 2016) (quoting Wolf v. Smith, 414 So. 2d 129, 130 (Ala. Civ. App. 1982)). "'The appellate jurisdiction of this court extends only to final judgments.'" E.L. v. C.P., 282 So. 3d 867, 870 (Ala. Civ. App. 2019) (quoting Nicke v. Minter, 195 So. 3d 274, 278 (Ala. Civ. App. 2015)). See § 12-22-2, Ala. Code 1975. An order denying a Rule 60(b) motion is a final order, and such an order is appealable. Ex parte King, 821 So. 2d 205, 209 (Ala. 2001). Thompson, however, filed her notice of appeal before the trial court entered the order purportedly denying her Rule 60(b) motion.

Rule 4(a)(5), Ala. R. App. P., provides:

"A notice of appeal filed after the entry of the judgment but before the disposition of all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59, Alabama Rules of Civil Procedure, shall be held in abeyance until all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59 are ruled upon; such a notice of appeal shall become effective upon the date of disposition of the last of all such motions."

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Although Rule 4(a)(5) provides that a notice of appeal shall be held in abeyance until certain types of motions have been ruled on, a motion filed pursuant to Rule 60 is not one of the enumerated motions.¹ As a result, Rule 4(a)(5) is not applicable to the circumstances of this appeal. See J.D. v. M.B., 226 So. 3d 706, 710-11 (Ala. Civ. App. 2016)

¹We note that the Federal Rules of Appellate Procedure also provide for a suspension of the effective date of a notice of appeal that is filed before the entry of an order disposing of certain types of motions. Rule 4(a)(4), Fed. R. App. P., however, also includes motions pursuant to Rule 60, Fed. R. Civ. P., that are filed within 28 days of the entry of the judgment:

"(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure -- and does so within the time allowed by those rules -- the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

"....

"(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

"(B)(i) If a party files a notice of appeal after the court announces or enters a judgment -- but before it disposes of any motion listed in Rule 4(a)(4)(A) -- the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."

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(determining that Rule 4(a)(5) did not apply to a notice of appeal in a case involving a motion filed pursuant to Rule 77, Ala. R. Civ. P.). We note that Rule 4(a)(4), Ala. R. App. P., provides that "[a] notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after the entry and on the day thereof." There is, however, no indication in the record that the trial court had announced any decision on Thompson's Rule 60(b) motion before the entry of its order purportedly denying that motion. In addition, in her notice of appeal, which was filed after the hearing on her Rule 60(b) motion, Thompson stated that the trial court had not ruled on her Rule 60(b) motion.

In Ex parte J.L.P., 230 So. 3d 396, 399 (Ala. Civ. App. 2017), this court determined that the filing of a notice of appeal to a circuit court before the denial of a father's Rule 60(b) motion in a juvenile court did not effectuate the withdrawal of the Rule 60(b) motion:

"In Veteto v. Yocum, 794 So. 2d 1117 (Ala. Civ. App. 2000), this court considered what effect the filing of a notice of appeal from a district-court judgment would have if the district court had not ruled on a pending Rule 59, Ala. R. Civ. P., motion. Noting that Rule 4(a)(5), Ala. R. App. P., which

provides that a notice of appeal from a circuit-court judgment filed 'before the disposition of all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59, Alabama Rules of Civil Procedure, shall be held in abeyance until all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59 are ruled upon,' does not apply to appeals from district courts, this court held that the filing of a notice of appeal from a district-court judgment before the disposition of a Rule 59 motion would effect the withdrawal of the Rule 59 motion and immediately vest the circuit court with jurisdiction over the appeal. 794 So. 2d at 1118-19. However, an appeal from the denial of a Rule 60(b)(4) motion does not vest the court to which the appeal is taken with jurisdiction to review the judgment challenged by the Rule 60(b)(4) motion; rather, it vests the court to which the appeal is taken with jurisdiction to review only the propriety of the lower court's ruling on the Rule 60(b)(4) motion. See, e.g., Hilliard v. SouthTrust Bank of Alabama, N.A., 581 So. 2d 826, 828 (Ala. 1991) ('An appeal from an order denying a Rule 60(b) [, Ala. R. Civ. P.,] motion presents for review only the correctness of that order and does not present for review the correctness of the final judgment from which the appellant seeks relief under the Rule 60(b) motion.'). Thus, in circumstances such as those in this case, if a notice of appeal filed while a Rule 60(b)(4) motion remains pending effected a withdrawal of the Rule 60(b)(4) motion, there would be nothing for the court to which the appeal was taken to review. Accordingly, we conclude that the holding in Veteto does not apply when a notice of appeal is filed while a Rule 60(b)(4) motion is pending in a juvenile court. Thus, the father's May 2015 Rule 60(b) motion was not withdrawn."

This court concluded that "the father's August 5, 2015, notice of appeal was premature with respect to the May 2015 Rule

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60(b) (4) motion because no final judgment ha[d] been entered with respect to that motion." Ex parte J.L.P., 230 So. 3d at 400. See Ex parte R.S.C., 853 So. 2d 228, 234 (Ala. Civ. App. 2002) (holding that a "father's petition for a writ of mandamus seeking to set aside a purported denial of a Rule 60(b) motion by operation of law was premature because the trial court had not yet ruled on the motion[]"). Therefore, the court in Ex parte J.L.P. held that the "notice of appeal never vested the circuit court with jurisdiction."² 230 So. 3d at 400. Because the 90-day period in Rule 59.1, Ala. R. Civ. P., for ruling on pending postjudgment motions does not apply to Rule 60(b) motions, this court, in Ex parte J.L.P., held that the father's Rule 60(b) motion remained pending in the juvenile court. Id.

As in Ex parte J.L.P., Thompson prematurely filed her notice of appeal before the trial court entered the order purportedly denying her Rule 60(b) motion.

"[T]he 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,

²This court also held that the notice of appeal was untimely filed as to an order denying another motion filed pursuant to Rule 60(b).

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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 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). "'[A]n order entered by a trial court without jurisdiction is a nullity.'" Johnson v. Halagan, 29 So. 3d 915, 917 (Ala. Civ. App. 2009) (quoting J.B. v. A.B., 888 So. 2d 528, 532 (Ala. Civ. App. 2004)). Because the notice of appeal divested the trial court of jurisdiction, its order purportedly denying Thompson's Rule 60(b) motion is a nullity, and the motion is still pending in the trial court. Furthermore, Thompson's appeal was not taken from an appealable order. As a result, this court is without jurisdiction, and we dismiss the appeal.

APPEAL DISMISSED.

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