

Rel: May 21, 2021

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190345

Kelvin Peacock

v.

MFG/Alabama, LLC

**Appeal from Covington Circuit Court
(CV-17-900112)**

On Return to Remand

THOMPSON, Presiding Judge.

Kelvin Peacock, who at all times relevant to this appeal was incarcerated in the Bullock Correctional Facility, appealed from an

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August 2, 2019, judgment entered by the Covington Circuit Court ("the trial court"). On October 9, 2020, this court, on original submission, remanded the case to the trial court to determine "whether Peacock deposited [his] postjudgment motion in the prison mail system so as to be deemed timely filed." Peacock v. MFG/Alabama, LLC, [Ms. 2190345, October 9, 2020] ___ So. 3d ___, ___ (Ala. Civ. App. 2020). The trial court complied with our instructions and, in reaching its decision on remand, considered evidence submitted by the parties. In support of its contention that Peacock's postjudgment motion was not timely filed, MFG/Alabama, LLC, the defendant below, submitted an affidavit from Olivia Hicks, the mail clerk at the Bullock Correctional Facility during the period when Peacock would have mailed his postjudgment motion, i.e., in August and September 2019. Hicks averred in pertinent part:

"4. Now, and in 2019, the Bullock Correctional Facility had two mail systems for inmates to use: one for regular mail and one for 'legal mail.' For regular mail, an inmate pays for his own postage and places the mail in an outgoing mailbox designated for regular mail. If an inmate needs to send mail relating to a court case, [he or she is] allowed to use the box designated for 'legal mail.' The State of Alabama pays for the cost of two (2) stamps per week for postage for legal mail. In 2019 and currently, for outgoing legal mail where postage was

paid by the State of Alabama, I have the responsibility of placing postage on any outgoing legal mail using a postage meter, logging the mail as 'outgoing legal mail,' logging the amount of the postage, the date it was mailed, the inmate's name, and the recipient's name and address.

"5. I personally checked my records of 'outgoing legal mail' for August and September 2019, I have no record of mailing any 'legal mail' for Kelvin Peacock during this time period."

On April 19, 2021, the trial court entered an order finding:

"1. At the time [Peacock] filed his 'motion to alter, amend, or vacate judgment,' he was an inmate at the Bullock Correctional Facility.

"2. The Bullock Correctional Facility has a mail system designed for 'legal' mail.

"3. [Peacock] did not use the 'legal' mail system to deliver his motion to the circuit clerk.

"4. [Peacock's] motion was date-stamped by the circuit clerk on September 12, 2019.

"5. More than thirty (30) days elapsed from the final order issued in this case and the filing of [Peacock's] motion.

"6. [Peacock's] 'motion to alter, amend, or vacate judgment' was untimely. See Rule 59(e), Ala. R. Civ. P."

The record supports the trial court's determinations that, because Peacock did not comply with Rule 4(c), Ala. R. App. P., Peacock's

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postjudgment motion filed with the circuit clerk on September 12, 2019, was untimely and, consequently, that the time for filing a notice of appeal was not tolled pursuant to Rule 4(a)(3), Ala. R. App. P. The final judgment in this case was entered on August 2, 2019. Peacock's notice of appeal was filed on January 10, 2020. Because Peacock did not file his notice of appeal within 42 days of the entry of the August 2, 2019, judgment, i.e., on or before September 13, 2019, Peacock's notice of appeal was untimely and did not invoke this court's jurisdiction, and, accordingly, this appeal is dismissed. See Buchanan v. Young, 534 So. 2d 263, 264 (Ala. 1988)("The 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."); and Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court.").

APPEAL DISMISSED.

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