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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190780

Albert West

v.

Mitchell W. Bagwell and Linda E. Bagwell

Appeal from Fayette Circuit Court
(CV-16-900028)

EDWARDS, Judge.

In June 2016, Mitchell W. Bagwell and Linda E. Bagwell filed a complaint in the Fayette Circuit Court ("the trial court") seeking to

2190780

establish a boundary line between their property and property owned by Albert West. West filed an answer and a counterclaim in which he claimed that he had adversely possessed a portion of the property owned by the Bagwells. After a trial held in July 2019, the trial court entered a judgment on February 11, 2020, establishing the boundary line between the parties' properties and rejecting West's adverse-possession claim. West filed a timely postjudgment motion, pursuant to Rule 59, Ala. R. Civ. P., directed to that judgment on March 11, 2020.

On May 29, 2020, West filed in the trial court a motion styled as "Motion to Extend 90-Day Deadline of [West's] Motion to Alter, Amend, or Vacate the Judgment." In that motion, West indicated that the 90-day deadline provided in Rule 59.1, Ala. R. Civ. P., for ruling on his postjudgment motion would expire on June 8, 2020, that the trial court had yet to set a hearing on the motion, and that his counsel had recently undergone surgery from which he was still recovering.¹ In addition,

¹The 90-day period for ruling on West's postjudgment motion actually expired on June 9, 2020. As we explained in Ex parte Kelley, [Ms. 2190878, Feb. 26, 2021] ___ So. 3d ___, ___ n.2 (Ala. Civ. App. 2021), the administrative orders entered by our supreme court in response to the

2190780

West's motion indicated that he had requested from the Bagwells their consent to extend the 90-day period for ruling on the postjudgment motion, as prescribed in Rule 59.1, and that the Bagwells had declined to consent to the extension of the 90-day period. West requested that the trial court extend the 90-day period, indicating in his motion that Rule 59.1 provides three "exceptions [for] allow[ing] an extension of the 90-day deadline," which, West stated, were "(a) by the express consent of the parties, which consent shall appear of record, or (b) extension by the appellate court to which an appeal of the judgment would lie, and (c) such time may be further extended for good cause shown." (Emphasis added.)

The trial court purported to extend the 90-day period by granting West's motion and, after a hearing held on June 15, 2020, purported to deny West's postjudgment motion. West filed his notice of appeal on July 24, 2020.

COVID-19 pandemic, which extended deadlines subject to regulation by that court, did not extend any deadlines past May 15, 2020, and, therefore, did not affect the deadline for the trial court to rule on West's postjudgment motion.

2190780

"Although neither party has raised an issue concerning this court's jurisdiction in this case, we must first consider whether this court has 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.' ' " Webb v. City of Demopolis, 14 So. 3d 887, 889 (Ala. Civ. App. 2008) (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)).

"Timely filing of an appeal is jurisdictional and '[a]n appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court.' Rule 2(a)(1), [Ala. R. App. P.]. Under the rules, the time for taking an appeal from a final judgment is [42] days after that judgment is entered. The filing of [postjudgment] motions may suspend the time for taking an appeal, but with the express limitations and requirements of Rule 59.1, [Ala. R. Civ. P.,] and Rule 4, [Ala. R. App. P.]."

Spina v. Causey, 403 So. 2d 199, 201 (Ala. 1981).

At all times relevant to the postjudgment practice in this action, Rule 59.1 provided:

"No postjudgment motion filed pursuant to Rules 50, 52, 55, or 59 shall remain pending in the trial court for more than ninety (90) days, unless with the express consent of all the

parties, which consent shall appear of record, or unless extended by the appellate court to which an appeal of the judgment would lie, and such time may be further extended for good cause shown. A failure by the trial court to render an order disposing of any pending postjudgment motion within the time permitted hereunder, or any extension thereof, shall constitute a denial of such motion as of the date of the expiration of the period."²

Contrary to West's assertion in his motion to extend the 90-day period, Rule 59.1 provides only two methods to secure such an extension. See Ex parte Davidson, 782 So. 2d 237, 241 (Ala. 2000). In Ex parte

²Effective October 1, 2020, Rule 59.1 was amended to read:

"No postjudgment motion filed pursuant to Rules 50, 52, 55, or 59 shall remain pending in the trial court for more than ninety (90) days, unless with the express consent of all the parties, which consent shall appear of record, or unless extended by the appellate court to which an appeal of the judgment would lie, and such time may be further extended for good cause shown. Consent to extend the time for a hearing on the postjudgment motion beyond the 90 days is deemed to include consent to extend the time for the trial court to rule on and dispose of the postjudgment motion. A failure by the trial court to render an order disposing of any pending postjudgment motion within the time permitted hereunder, or any extension thereof, shall constitute a denial of such motion as of the date of the expiration of the period."

The amendment is not relevant to the issue presented by this appeal.

2190780

Davidson, our supreme court stated: "There are only two methods listed in Rule 59.1 for extending the 90-day period: (1) the express consent of all parties to an extension of the 90-day period, [and] (2) the grant of an extension of time by an appellate court.'" 782 So. 2d at 241 (quoting Farmer v. Jackson, 553 So. 2d 550, 552 (Ala. 1989)); see also Smith v. Smith, 4 So. 3d 1178, 1181 (Ala. Civ. App. 2008). Although it is true that, "[o]nce the other party consents [to an extension of the 90-day period] or the appellate court grants an extension, then the trial court can grant further extension for good cause shown," Crowder v. Zoning Bd. of Adjustment of Birmingham, 409 So. 2d 837, 838 (Ala. Civ. App. 1981), a trial court lacks authority to grant an extension of the 90-day period in the first instance. See Alabama Elec. Co. v. Dobbins, 744 So. 2d 928, 930 (Ala. Civ. App. 1999) ("[T]here is no mechanism whereby the trial court may unilaterally extend the 90-day period set forth in Rule 59.1.").

In the present case, West sought from the trial court an extension of the 90-day period, despite the fact that the Bagwells had refused to consent to the extension. The trial court lacked the authority under Rule 59.1 to extend the 90-day period for ruling on West's postjudgment

2190780

motion, and his postjudgment motion was therefore denied by operation of law on June 9, 2020. See note 1, supra. West's notice of appeal was filed on July 24, 2020, more than 42 days after the denial of his postjudgment motion; his appeal is therefore untimely and must be dismissed. See Smith, 4 So. 3d at 1181.

APPEAL DISMISSED.

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