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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Allison Rowland

v.

Sparkman, Shepard & Morris, P.C.

**Appeal from Madison Circuit Court
(CV-19-901780)**

MOORE, Judge.

Allison Rowland appeals from a summary judgment entered by the Madison Circuit Court ("the trial court") in favor of Sparkman, Shepard & Morris, P.C. We dismiss the appeal.

Procedural History

In 2017, Richard Tucker, Mike Gunnells, Henry Scheuer, Mark Wise, and William Kruse ("the trustees"), as trustees of the Beasley Spring Acres Neighborhood Improvement Trust ("the trust"), filed a motion to enforce a 2008 judgment against Rowland, a property owner in the Spring Acres neighborhood ("the neighborhood"), alleging that she was causing a nuisance by conducting commercial farming operations on her property in violation of the restrictive covenants applicable to the neighborhood. The trustees retained Sparkman, Shepard & Morris, P.C. ("the law firm"), to prosecute the motion. The trial court granted the motion and, among other things, ordered Rowland to pay attorney's fees in the amount of \$26,976.32 incurred by the trustees to the law firm. Rowland paid the funds necessary to satisfy the judgment, but, in a previous appeal, this court determined that the judgment granting the motion to enforce the 2008 judgment and requiring Rowland to pay the law firm's fees was void. See Rowland v. Tucker, 286 So. 3d 713 (Ala. Civ. App. 2019).

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On September 20, 2019, Rowland filed a complaint against the law firm, the trustees, and the trust. Rowland asserted a claim of unjust enrichment against all the defendants, seeking the equitable remedy of the imposition of a constructive trust in her favor; she also asserted a claim of malicious prosecution against only the trustees and the trust. Rowland asserted that the trustees and the trust had instituted legal proceedings against her maliciously and without probable cause, that a judgment had been entered in that case that required to her to pay \$26,976.32 in attorney's fees, that she had paid a total of \$27,663.10 to satisfy the judgment, which total included costs taxed to her in the judgment as well as postjudgment interest, and that those funds had been ultimately applied toward attorney's fees owed to the law firm by the trustees and the trust. Rowland also asserted that, because this court had determined that the judgment requiring payment of the attorney's fees to the law firm was void, she was entitled to a refund of the \$27,663.10 that she had paid pursuant to that void judgment. She argued that all the defendants had been unjustly enriched by retaining the amount of

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\$27,663.10 and that a constructive trust should be imposed in her favor concerning those funds.

On October 23, 2019, the trustees and the trust answered the complaint and counterclaimed, alleging that Rowland had breached a previous judgment and settlement agreement. The law firm answered the complaint on October 28, 2019. On December 13, 2019, Rowland filed a reply to the counterclaim.

On March 13, 2020, the law firm filed a motion for a summary judgment. Rowland responded to the summary-judgment motion and filed a cross-motion for a summary judgment on April 24, 2020. After a hearing, the trial court entered an order on May 6, 2020, granting the law firm's summary-judgment motion. Upon Rowland's request for a Rule 54(b), Ala. R. Civ. P., certification as to the May 6, 2020, order and the law firm's agreement with that request, the trial court entered an order on June 3, 2020, again granting the law firm's motion for a summary judgment and stating, in pertinent part: "There being no just reason for delay, it is hereby ORDERED that the Clerk of the Court shall cause to be entered a final judgment in favor of the [law firm] and against ... Rowland.

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Costs are taxed as prepaid. All other claims against [the other] Defendants remain pending." Rowland filed her notice of appeal on July 10, 2020.

Discussion

On appeal, Rowland argues that "[the law firm] should be required to make restitution to Rowland of money she paid to [the law firm] while an appeal of the judgment upon which the payment was made was pending" and that "a constructive trust was imposed on the money paid to [the law firm]." However, we must first consider whether this court has appellate jurisdiction. "Jurisdictional matters, such as whether an order is final so as to support an appeal, are of such importance that a court may take notice of them ex mero motu." BB&S Gen. Contractors, Inc. v. Thornton & Assocs., Inc., 979 So. 2d 121, 123 (Ala. Civ. App. 2007). In BB&S, this court considered the propriety of a Rule 54(b) certification as a jurisdictional issue, determined that the certification was in error, and dismissed the appeal. Id. Accordingly, we will consider whether the Rule 54(b) certification in this case was proper.

Rule 54(b) provides, in pertinent part:

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"When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

Our supreme court has cautioned that Rule 54(b) certifications should be entered only in exceptional cases and should not be entered routinely.

Baker v. Bennett, 644 So. 2d 901, 903 (Ala. 1994). In particular, a Rule 54(b) certification should not be entered if the issues relating to the claim being certified and the issues relating to a claim that will remain pending in the trial court "are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results." Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987).

In Howard v. Allstate Insurance Co., 9 So. 3d 1213 (Ala. 2008), Christopher Howard and Linda Howard sued various defendants to recover damages for personal injuries they and their children had sustained in an automobile accident. The record indicated that, before the accident, Tomas Gonzalez and his housemate, Juan Elizondo, had assisted Preston Thompson and his brother, Perry Thompson, to move

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furniture. Preston Thompson was a part owner of South Alabama Property Services, Inc. ("SAPS"), a company that occasionally employed Elizondo as a laborer. After completing the move, Preston allowed Elizondo to borrow a truck he owned. Elizondo then allegedly loaned the truck to Gonzalez. The accident happened while Gonzalez was borrowing the truck. The Howards claimed that Gonzalez had negligently and wantonly operated the truck he was driving, thereby causing the accident, and that Elizondo had negligently or wantonly entrusted the truck to Gonzalez. The Howards also claimed that, at the time of the accident, Gonzalez was acting within the line and scope of his employment with Preston, Perry, and/or SAPS. Allstate Insurance Company, the automobile-liability insurance carrier for Preston, intervened as a third-party defendant to contest coverage for the accident. The trial court entered summary judgments in favor of all the defendants other than Gonzalez and Elizondo and certified those judgments as final, pursuant to Rule 54(b). The Howards then appealed.

After noting that piecemeal appellate review is generally disfavored, our supreme court analyzed the case to determine whether the trial court

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had properly certified the summary judgments as final. The supreme court noted that a summary judgment in favor of one or more, but fewer than all, of the defendants should not be certified as final if the issue or issues relating to the claim upon which the summary judgment was granted and the issue or issues relating to a claim that will remain pending in the trial court " ' ' ' are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results.' " ' " 9 So. 3d at 1215 (quoting Schlarb v. Lee, 955 So. 2d 418, 419-20 (Ala. 2006), quoting in turn other cases). Because the Howards had alleged that Gonzalez and Elizondo had been acting as agents of the Thompsons and SAPS "at all material times," the supreme court held that "[i]t would accordingly be contrary to the interests of justice to adjudicate these remaining claims against Gonzales and Elizondo separately from the claims against the other defendants; the common issues are intertwined." 9 So. 3d at 1215. Thus, the supreme court determined that the trial court had exceeded its discretion in certifying the summary judgments as final and dismissed the appeal as arising from nonfinal judgments.

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In Centennial Associates., Ltd. v. Guthrie, 20 So. 3d 1277 (Ala. 2009), the supreme court cited Howard when determining that a summary judgment that had been entered in favor of less than all the defendants in that case had been improperly certified under Rule 54(b) because the remaining claims against the other defendants left pending before the trial court "w[ould] require resolution of the same issue" upon which the summary judgment had been entered. 20 So. 3d at 1281. In Wright v. Harris, 280 So. 3d 1040 (Ala. 2019), the supreme court followed Howard when deciding that a Rule 54(b) certification of a summary judgment in favor of less than all the defendants is improper when the claims adjudicated and the claims against the remaining defendants involve the same underlying facts such that it would be likely that the appellate court would have to repeat its consideration of those facts in a later appeal of a judgment on the remaining claims and, thus, would result in duplicative appellate proceedings. The supreme court held that, when the facts underlying the claims against multiple defendants are substantially the same, those claims should be subjected to only one appellate review. 230 So. 3d at 1047.

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In this case, Rowland's complaint alleges that the trustees and the trust retained the law firm to represent them in the 2017 litigation, which, Rowland contends, was instigated by the trustees and the trust maliciously, leading to the void order requiring her ultimately to pay the law firm \$27,663.10. Rowland alleged that, based on those facts, the trustees, the trust, and/or the law firm had been unjustly enriched and owed her restitution. The law firm moved for a summary judgment, arguing that, as a matter of law, it could not be liable to Rowland. The trial court granted that motion, leaving the unjust-enrichment and malicious-prosecution claims pending against the trustees and the trust. The unjust-enrichment claim against the trustees and the trust rests on the identical operative facts as the unjust-enrichment claim against the law firm. To the extent that Rowland claims she was damaged by a malicious prosecution resulting in a void judgment requiring her to pay the law firm's fees, the malicious-prosecution claim also rests on the same facts.

The law firm argued in its motion for a summary judgment that, as a matter of law, it could not be ordered to return the attorney's fees to

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Rowland, essentially asserting that only the parties to the original suit, i.e., the trustees and the trust, would owe Rowland restitution. The trustees and the trust filed a collective answer denying their liability and asserting, among other affirmative defenses, that Rowland had been injured by acts or omissions for which they are not responsible and that they owe no duty to Rowland, implying that the law firm might owe Rowland restitution. Thus, the resolution of Rowland's appeal in this case could affect the pending claims against the trustees and the trust. See Smith v. Slack Alost Dev. Servs. of Alabama, LLC, 32 So. 3d 556 (Ala. 2009) (noting that an appellate court should not review a matter on appeal when that same matter might affect the pending claims against the remaining parties).

Under the foregoing authority, the claims against all the defendants should be adjudicated before this court engages in appellate review of only part of the case because the claims are so closely intertwined that the possibility of duplicative appeals involving the same facts is likely and because the parties to the remaining claims could be prejudiced by a premature decision on the merits of Rowland's claim against the law firm.

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When a trial court has improperly certified a nonfinal order as a final judgment, an appellate court should dismiss an appeal from that judgment based on a lack of appellate jurisdiction. See Smith, supra. Accordingly, we dismiss the appeal.

APPEAL DISMISSED.

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