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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Brittany Tarice Jordan, individually and on behalf of Caden  
Jordan, a minor**

v.

**Diane Reilly Tyner**

**Appeal from Montgomery Circuit Court (CV-19-900703)**

HANSON, Judge.

This appeal, which was transferred to this court pursuant to Ala. Code 1975, § 12-2-7(6), arises from a civil action brought in the Montgomery Circuit Court by Brittany Tarice Jordan ("Brittany"),

individually and on behalf of her minor son, Caden Jordan ("Caden"); the April 19, 2019, complaint sought an award of compensatory and punitive damages from Diane Reilly Tyner on the claimed basis that Brittany and Caden ("the plaintiffs") had suffered injuries on April 21, 2017, because, the plaintiffs said, Tyner had negligently, wantonly, or recklessly failed to observe traffic laws when the front of her motor vehicle had collided with the rear of the motor vehicle operated by Brittany and occupied by Caden. After Tyner had answered the plaintiffs' original complaint, the plaintiffs amended their complaint on April 28, 2020, to add claims against Cindy Dail and Savannah Dail, two other motorists whom, the plaintiffs alleged, operated their motor vehicles in a manner so as to negligently, wantonly, or recklessly injure the plaintiffs.

In May 2020, the Dails filed a motion to dismiss the claims asserted by Brittany, individually, on the basis that she had not timely added them as defendants. However, the Dails' motion stated that it did not "seek dismissal of the claims brought by Brittany on behalf of the minor child," i.e., Caden.<sup>1</sup> The trial court, after holding a virtual hearing, entered

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<sup>1</sup>See generally Ala. Code 1975, § 6-2-8(a), concerning the tolling of otherwise applicable limitations periods for claims of minors under the age of 19 years.

an order on June 9, 2020, denying the Dails' motion.

On June 19, 2020, Tyner moved for a summary judgment in her favor as to the claims asserted by the plaintiffs against her. In her summary-judgment motion, which was supported by her own affidavit, Tyner asserted that the plaintiffs could not show that she had breached a duty to them because, Tyner said, her motor vehicle had been "at a complete stop" and had been "rear-ended" by an automobile operated by Cindy Dail just before Tyner's vehicle had impacted the motor vehicle being operated by Brittany at the time of the collision made the basis of the plaintiffs' claims. In separate orders, the trial court set a trial date of November 16, 2020, and set Tyner's summary-judgment motion for an August 11, 2020, virtual hearing; however, because the Dails had sought review in our supreme court of the June 9, 2020, order denying their motion to dismiss via a petition for the writ of mandamus, the trial court entered an order staying all proceedings in that court and canceling all future court dates.<sup>2</sup> Notwithstanding that order, in October 2020, State Automobile Mutual

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<sup>2</sup>We note that the Dails' filing of their mandamus petition did not divest the trial court of jurisdiction to act in the case. See Ex parte McDaniel, 291 So. 3d 847, 851 n.2 (Ala. 2019).

Insurance Company ("State Auto"), an insurance company allegedly providing uninsured-motorist insurance coverage to Brittany, sought and was granted leave to intervene in the case to protect its interests and to "opt out" of any scheduled trial pursuant to the holding in Lowe v. Nationwide Insurance Co., 521 So. 2d 1309 (Ala. 1988).

On April 23, 2021, our supreme court rendered its opinion in Ex parte Dail, [Ms. 1190846, Apr. 23, 2021] \_\_\_ So. 3d \_\_\_ (Ala. 2021), granting the mandamus petition filed by the Dails. In pertinent part, our supreme court concluded in Ex parte Dail that the April 28, 2020, amended complaint did not relate back to the April 19, 2019, original complaint for purposes of the applicable statute of limitations, Ala. Code 1975, § 6-2-38(1), such that Brittany's tort claims against the Dails could properly proceed; the opinion concluded with the following statement: "[T]he trial court is directed to dismiss [Brittany]'s claims against the Dails." \_\_\_ So. 3d at \_\_\_. Significantly, however, a footnote appearing in the opinion in Ex parte Dail noted the limitation upon the relief that the Dails' motion to dismiss had sought, observing that Brittany had "also asserted claims on behalf of her minor child, Caden," that "[t]he Dails d[id] not seek to have the action dismissed against them insofar as it relates to those claims," and that the

"opinion [in Ex parte Dail] applies only to [Brittany]'s individual claims."

\_\_\_ So. 3d at \_\_\_ n.1.

After Ex parte Dail was decided, Tyner requested that a new hearing on her summary-judgment motion be set. The trial court held a hearing on that motion on June 22, 2021, after which counsel for the plaintiffs sought and obtained leave to file a written response to the motion. That response, which was filed on July 16, 2021, consisted solely of legal argument and did not adduce any additional evidence. On August 4, 2021, the trial court entered an order granting Tyner's summary-judgment motion; two days later, State Auto filed a notice indicating that it would not further pursue intervention in the case because, it posited, "there is no case left in which to intervene." On September 14, 2021, Brittany, listing herself with the identifier "et al.," filed a notice of appeal directed to the August 4, 2021, order granting Tyner's summary-judgment motion; a corrected notice of appeal that listed Brittany in her individual capacity and as representative of Caden was thereafter filed. See Rule 3(c), Ala. R. App. P. ("An appellant may not use the terms 'et al.' or 'etc.' to designate multiple appellants or appellees in lieu of naming each appellant or appellee.")

Although no party to this appeal has questioned the existence of

appellate jurisdiction, we address the issue ex mero motu. See, e.g., Lund v. Owens, 170 So. 3d 691, 695 (Ala. Civ. App. 2014). It is well settled that an appeal will lie only from a final judgment and that this court must dismiss an appeal not taken from a final judgment. Id.; accord Ala. Code 1975, § 12-22-2. In this context, the provisions of Rule 54(b), Ala. R. Civ. P., are pertinent:

"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. Except where judgment is entered as to defendants who have been served pursuant to Rule 4(f), Ala. R. Civ. P., in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

(Emphasis added.)

In this case, the trial court entered an order granting the summary-judgment motion filed by Tyner; that motion had been directed to all claims asserted against her on behalf of both plaintiffs. However, for all

that appears in the record, the trial court has yet to enter an order in compliance with our supreme court's mandate in Ex parte Dail, supra, directing dismissal of Brittany's claims against the Dails. Further, the claims asserted on behalf of Caden against the Dails were not challenged by the Dails in their motion to dismiss and were expressly left undisturbed by our supreme court's decision in Ex parte Dail. See id. at \_\_\_ n.1. Finally, the trial court has at no time directed the entry of a final judgment pursuant to the first sentence of Rule 54(b) as to the order entered in response to Tyner's summary-judgment motion. As a result, the trial court's order granting Tyner's summary-judgment motion is, by operation of the last sentence of Rule 54(b), "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties" and, thus, is nonfinal.

For the reasons stated herein, the appeal is dismissed for lack of appellate jurisdiction. See Lund, supra, 170 So. 3d at 695.

APPEAL DISMISSED.

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