

Rel: June 23, 2023

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

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CL-2022-1019

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**Gavin Woodruff**

v.

**Bonnie Glenn**

**Appeal from Baldwin Circuit Court  
(CV-21-901414)**

HANSON, Judge.

Gavin Woodruff appeals from the denial an order entered by the Baldwin Circuit Court denying his postjudgment motion to vacate a judgment awarding a default judgment in favor of Bonnie Glenn in her breach-of-contract claim against Woodruff and dismissing Woodruff's compulsory counterclaim ("the default judgment").

Facts and Procedural History

On December 14, 2021, Glenn filed a complaint against Woodruff in the small-claims division of the Baldwin District Court ("district court"), which assigned the action case number SM-21-902990. Glenn alleged that she had hired Woodruff to install a six-foot chain-link fence with gates on her property and that Woodruff had installed a four-foot fence, had done the installation improperly, had spent an extra \$200 on supplies, and had refused to give her a receipt for the supplies. She alleged that she had had to employ another handyman to fix the fence. Glenn sought \$5,150 in damages, as well as court costs.

On December 29, 2021, Woodruff filed an answer in the district court and asserted a compulsory counterclaim in the amount of \$20,000. On December 30, 2021, Woodruff filed, in the circuit court, an answer and a counterclaim for \$20,000 and a notice of removal of the case from the district court to the circuit court pursuant to § 12-12-37, Ala. Code 1975. The circuit-court clerk removed the action and assigned it case number CV-21-901414. On March 23, 2022, the circuit court set the case for a bench trial on June 22, 2022. On May 19, 2022, the circuit court reset the case for a bench trial on June 29, 2022. On June 14, 2022, the case

was set for mediation and the bench trial was continued. On June 21, 2022, the circuit court vacated its order setting the case for mediation. On July 12, 2022, the circuit court set the case for a status hearing on August 17, 2022. On August 17, 2022, the status hearing was held. Woodruff did not appear, and the case was set for a bench trial on September 14, 2022. On September 14, 2022, Woodruff failed to appear at the trial, and the circuit court entered the default judgment.

On September 20, 2022, Woodruff filed a postjudgment motion to vacate the default judgment. In the motion, Woodruff asserted that he had been hired to make home improvements on Glenn's house pursuant to an arrangement whereby Glenn would pay Woodruff on a room-by-room basis. Woodruff asserted that he had incurred out-of-pocket expenses to pay for labor and materials and that Glenn had not paid him. Woodruff alleged that he had filed an answer to Glenn's complaint in case number SM-21-902990 on January 3, 2022, and had asserted a counterclaim in the amount of \$20,000 that same day. Woodruff attached exhibits indicating that on January 3, 2022, he had filed a motion in the district court to remove the action to the circuit court, which the district court purported to grant on April 22, 2022. That case was assigned case

number CV-22-900410 and was assigned to a different circuit judge than the judge assigned to case number CV-21-901414. Woodruff asserted that he and his counsel had appeared before the circuit court in case number CV-22-90410 on September 13, 2022, and that he had been granted a continuance of the trial. Woodruff stated that "Woodruff as well as undersigned counsel were laboring under the misapprehension that there was only one case before the Circuit Court and that this case was with Judge Taylor" and that "[n]either Woodruff nor his counsel ever endeavored to obtain two separate and distinct case numbers for this matter as such an enterprise would be absurd and counterproductive in addition to being violative of long-established policy of streamlining litigation." Woodruff asserted that neither he nor his counsel had any reason to "believe the existence of two separate and distinct case numbers assigned to the same matter." Woodruff argued that he believed that the trial set for September 14, 2022, had been continued by Judge Taylor and that he was not culpable because any reasonable person would reach the same conclusion. Woodruff argued that not vacating the default judgment would deprive him of his day in court and that nothing "even remotely similar will befall [Glenn]".

On September 21, 2022, the circuit court denied the motion. Later, that same day, Woodruff filed a motion for a new trial and, citing Rule 60(b), Ala. R. Civ. P., for relief from the circuit court's denial of his motion to vacate the default judgment. Woodruff argued that his failure to appear was due to excusable neglect. On September 22, 2022, the circuit court denied Woodruff's motion. Woodruff filed a timely notice of appeal.<sup>1</sup>

### Discussion

Woodruff argues that the default judgment should have been vacated because, he argues, there was an error in judicial administration and excusable neglect on the part of Woodruff's counsel. We note that Woodruff sought removal of the action from the district court to the circuit court pursuant to § 12-12-37, Ala. Code 1975, which provides:

"Any civil action brought in district court of which the circuit court has concurrent jurisdiction may be removed by a defendant or defendants to the circuit court of the county in which the action is pending. A defendant or defendants desiring to remove a case under this section shall file a notice of removal with the circuit court within 30 days after receipt, through service or otherwise, of a copy of the initial pleading. A case removed under this section shall not be subject to the jurisdictional damage limitations of district court. If a

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<sup>1</sup>Woodruff filed his brief in the form of a petition for a writ of mandamus, which this court treated as an appellant's brief, and this court ordered that all other briefs be filed in accordance with Rule 31, Ala. R. App. P.

defendant or defendants requests removal of any civil action under this section, the circuit clerk shall remove the civil action to circuit court."

Section 12-12-37, adopted in 2019, provides for the removal of an action from a district court only when a district court and a circuit court have concurrent jurisdiction. Nest Two Ventures, LLC v. Capps, 295 So. 3d 1066, 1069 n.1 (Ala. Civ. App. 2019). In 2019, the legislature amended Ala. Code 1975, § 12-11-30, § 12-12-30, and § 12-19-71 (1) to increase the minimum amount in controversy necessary to invoke the exclusive original jurisdiction of our circuit courts from \$10,000 to \$20,000; (2) to increase the maximum amount in controversy permitted to invoke the original civil jurisdiction of our district courts from \$10,000 to \$20,000; and (3) to ensure that the provision setting the filing fee for cases in our district courts reflected the increased authorized amount in controversy. Section 12-11-30(1) now provides that a circuit court has exclusive original jurisdiction in cases in which the amount in controversy exceeds \$20,000, exclusive of interests and costs, while a district court has exclusive original jurisdiction when the amount is less than \$6,000, and that a district court and a circuit court have concurrent jurisdiction when the amount in controversy exceeds \$6,000 but does not

exceed \$20,000. In the present case, Glenn's breach-of-contract claim seeking damages in the amount of \$5,150 was within the exclusive original jurisdiction of the district court and not the concurrent jurisdiction of the district court and the circuit court.

"It is well settled that 'subject-matter jurisdiction may not be waived; a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court *ex mero motu*.' C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003); *see, e.g., Ex parte Norfolk S. Ry. Co.*, 816 So. 2d 469, 472 (Ala. 2001) ('We are obliged to recognize an absence of subject-matter jurisdiction obvious from a record, petition, or exhibits to a petition before us.'). A judgment entered by a court that lacks subject-matter jurisdiction is void. *See C.J.L.*, 868 So. 2d at 454; *see also J.B. v. A.B.*, 888 So. 2d 528 (Ala. Civ. App. 2004)."

S.B.U. v. D.G.B., 913 So. 2d 452, 455 (Ala. Civ. App. 2005).

In determining a trial court's subject-matter jurisdiction, an appellate court asks whether the trial court had the constitutional and statutory authority to hear the case. Ex parte Safeway Ins. Co., 148 So. 3d 39 (Ala. 2013). In interpreting statutes, appellate courts apply the following principles:

"The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute." Ex parte Moore, 880 So. 2d 1131, 1140 (Ala. 2003) (quoting Ex parte Weaver, 871 So. 2d 820, 823 (Ala. 2003), quoting

in turn Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996)). "In any case involving statutory construction, our inquiry begins with the language of the statute, and if the meaning of the statutory language is plain, our analysis ends there." Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005). "Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous." Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001). "If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). Moreover, "[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning," IMED Corp., 602 So. 2d at 346, and "[b]ecause the meaning of statutory language depends on context, a statute is to be read as a whole ... [and s]ubsections of a statute are in pari materia." Ex parte Jackson, 614 So. 2d 405, 406 (Ala. 1993).'

"Mitchell v. State, 316 So. 3d 242, 247 (Ala. Crim. App. 2019)."

Ex parte Z.W.E., 335 So. 3d 650, 655 (Ala. 2021)(plurality opinion).

Section 12-12-37 allows a defendant to remove any pending district-court civil case in which a circuit court has concurrent jurisdiction with the district court. Under the new jurisdictional limits, a defendant can remove any case when the amount in controversy falls within \$6,000.01



and \$20,000. A defendant may remove the action as a matter of right if the defendant files a notice of removal in the circuit court within 30 days of service of the initial pleading. If the defendant timely files a notice of removal in the circuit court, that circuit court's clerk "shall remove the civil action to circuit court."<sup>2</sup> § 12-12-37. A case removed to a circuit court under § 12-12-37 is not subject to the jurisdictional damage limitations applicable to the district courts. Therefore, if a defendant properly removes a case to a circuit court, the plaintiff is free to allege damages in excess of the maximum limit of the amount in controversy for concurrent jurisdiction of the district court and the circuit court, i.e., \$20,000. Exceeding the damages limitation applicable to the district courts upon removal of the civil action comports with Rule 13(j), Ala. R. Civ. P., which governs appeals from district courts for trial de novo and provides:

" (j) Appealed actions. Where an action is commenced in a court from which an appeal lies to the circuit court for a trial de novo any counterclaim made compulsory by subdivision (a)

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<sup>2</sup>Section § 12-11-9, Ala. Code 1975, requires a circuit court to transfer to a district court any case "filed in the circuit court [that is] within the exclusive jurisdiction of the district court." Presumably, § 12-11-9 would also apply to a case that, although within the exclusive jurisdiction of a district court, has been mistakenly removed to a circuit court pursuant to § 12-12-37, Ala. Code 1975.

of this rule shall be stated as an amendment to the pleading within thirty (30) days after the appeal has been perfected to the circuit court or within such further time as the court may allow; and other counterclaims and cross-claims shall be permitted as in an original action. When a counterclaim or cross-claim is asserted by a defendant in an appealed case, the defendant shall not be limited in amount to the jurisdiction of the lower court but shall be permitted to claim and recover the full amount of its claim irrespective of the jurisdiction of the lower court. If the plaintiff appeals a case to the circuit court from a lower court and obtains a trial de novo in the circuit court, the plaintiff shall be limited in the amount of his recovery to the jurisdictional amount that could have been claimed and recovered in the lower court, unless the defendant asserts a counterclaim in excess of the jurisdictional amount of the lower court. If a defendant appeals to the circuit court from a judgment rendered by a lower court, the plaintiff in the circuit court on a trial de novo shall be permitted to claim and recover the full amount of its claim even though the amount might exceed the jurisdiction of the lower court. For purposes of this Rule 13(j), the word 'appeal' includes petition for writ of certiorari."

(Emphasis added.)

If a defendant does not seek removal of an action under § 12-12-37, the defendant can still take a timely appeal to the circuit court as a matter of right under § 12-12-70, Ala. Code 1975. Generally, all appeals from final judgments of a district court are tried de novo in a circuit court. § 12-12-71, Ala. Code 1975. This court and our supreme court have addressed appeals from district courts to circuit courts that illustrate the jurisdictional limitations of those courts.

In Brewer v. Bradley, 431 So. 2d 544 (Ala. Civ. App. 1983), the plaintiff sued the defendant in the Coffee District Court, seeking to recover past-due rent. In the district court, the defendant stated that he intended to assert counterclaims in excess of the jurisdictional limits of the district court, and the district court entered a judgment in favor of the plaintiff on her claims. The defendant appealed from that district-court judgment to the Coffee Circuit Court; in addition, he asserted counterclaims alleging conversion and seeking an order awarding him possession of certain personal property.

The plaintiff moved to strike the defendant's counterclaims, and the circuit court granted that motion. The circuit court later entered a judgment on a jury verdict in favor of the plaintiff on her claims. 431 So. 2d at 545. On appeal, this court reversed the judgment, concluding that the circuit court had erred in striking the defendant's counterclaims. This court explained:

"A party is not required to file a compulsory counterclaim in the district court if the claim exceeds the jurisdiction of that court. A permissive counterclaim need not be filed in the district court regardless of the amount which might be claimed therein, but, if the claim exceeds the jurisdictional limit of the district court, a permissive counterclaim could not be processed by that court.

"....

"After an appeal to the circuit court from the district court, either a compulsory counterclaim seeking an amount in excess of [the district court's jurisdictional limit] or a permissive counterclaim for any sum, may then be originally filed, asserted and claimed and recovery may be had for the full amount of the defendant's claim without consideration of the ... monetary jurisdictional limitation which is imposed upon the district court. Rule 13(j), A[la]. R. Civ. P."

431 So. 2d at 545-46.

In Ex parte Nunnelley, 196 So. 3d 1227 (Ala. Civ. App. 2015), Safeway Insurance Company sued Nathaniel Nunnelley in the Lowndes District Court seeking \$3,479.45 in damages. Safeway sought to amend its complaint to seek damages in the amount of \$18,479.45, an amount above the district court's \$10,000 jurisdictional limit at that time. The district court denied the motion to amend. The complaint was then dismissed for want of prosecution. Safeway appealed for a trial de novo in the Lowndes Circuit Court and sought \$18,479.45 in damages. Even though Safeway had sought to amend the complaint in the district court to increase the amount of damages claimed from \$3,479.45 to \$18,479.45, an amount above the district court's \$10,000 jurisdictional limit, Safeway's complaint initially sought damages within the jurisdictional limit of the district court. This court held that the amount that Safeway

could seek to recover was limited by Safeway's choice of the district court as a forum and that Safeway could not seek damages exceeding the \$10,000 jurisdictional limit of the district court. This court stated:

"Our supreme court has explained that, under Rule 13(j), a plaintiff who initially seeks relief in the district court has 'willingly limited his damages to [the jurisdictional limit of the district court] in exchange for bringing his action in [the district court]' even on appeal for a trial de novo in the circuit court, unless the defendant files a counterclaim in excess of the jurisdictional limit of the district court. Ex parte Loftin, 540 So. 2d [65] at 67 [(Ala. 1988)]. The right to an appeal for a trial de novo does not permit the appealing plaintiff to bring an entirely new action against the defendant. [Blue Cross & Blue Shield of Alabama, Inc. v.] Butler, 630 So. 2d [413] at 416 [(Ala. 1993)]. Nunnelley has not asserted any counterclaim against Safeway; thus, Safeway is not entitled to amend its complaint to seek \$18,479.45 in damages from Nunnelley. Safeway is permitted to amend its complaint to seek up to \$10,000, the jurisdictional limit of the district court. Thus, the circuit court is instructed to limit the damages sought by Safeway in its amended complaint to \$10,000. See Ex parte Allstate, 443 So. 2d 939, 941 (Ala.1983) (granting a petition for the writ of mandamus to limit an appealing plaintiff from seeking damages in excess of the jurisdictional limit of the district court)."

196 So. 3d at 1232.

Prescott v. Furouzabadi, 485 So. 2d 707 (Ala. 1986), involved a plaintiff seeking \$4,999 from the defendant on a claim arising out of the purchase of an automobile. The Mobile District Court entered a judgment in favor of the plaintiff. The defendant appealed to the Mobile

Circuit Court for a trial de novo. The plaintiff amended her complaint to increase the amount of damages claimed to \$50,000. The circuit court denied the plaintiff's motion to amend. Our supreme court held:

"We believe that the trial judge erred in failing to follow Rule 13(j), A[la]. R. Civ. P. The relevant provision of Rule 13(j) states as follows:

"If the plaintiff appeals a case to the circuit court from a lower court and obtains a trial de novo in the circuit court, the plaintiff shall be limited in the amount of his recovery to the jurisdictional amount that could have been claimed and recovered in the lower court, unless the defendant asserts a counterclaim in excess of the jurisdictional amount of the lower court. If a defendant appeals to the circuit court from a judgment rendered by a lower court, the plaintiff in the circuit court on a trial de novo shall be permitted to claim and recover the full amount of its claim even though the amount might exceed the jurisdiction of the lower court.' (Emphasis added.)

"The Committee Comments to this Rule explain the need for this provision, as follows:

"Rule 13(j) has no federal counterpart. The first sentence is based on Vermont Rule 13(j). The intent of the remaining portion of Rule 13(j) is evident from a reading of same. If counterclaims in appealed actions are going to be compulsory, it certainly should follow that the defendant should be permitted to recover his full damage even though it exceeded the jurisdiction of the lower court. The last sentence of Rule 13(j) provides that when a defendant appeals a case from a lower

court to the circuit court and obtains a trial de novo, the plaintiff then could recover an amount in excess of the jurisdiction of the lower court. In many cases, in order to bring the case in one of the lower courts, a plaintiff will waive a portion of his claim for a quick and inexpensive trial. The defendant then appeals the case to the circuit court often for the purpose of delaying the collection of the judgment well knowing that there is a lid on the amount of the plaintiff's recovery. In such cases, the plaintiff will be entitled to claim and recover the full amount of his damages in the circuit court. Such a rule, no doubt, would prevent many cases from being appealed to the circuit court either for the purpose of delay only or for the purpose of securing a second trial knowing that he has all to gain and nothing to lose by so doing. The same logic would not apply if the plaintiff appealed and the suggested rule provides that should he appeal he would be limited to the jurisdiction of the lower court, except when defendant asserts a counterclaim in excess of the jurisdictional amount of the lower court.'

"In the present case, the defendant chose to appeal from the judgment of the district court. In doing so, he incurred the risk that the plaintiff would seek damages in excess of the district court's jurisdictional amount. See, Hardy v. Tabor, 369 So. 2d 559, 560 (Ala. Civ. App.), aff'd, 369 So. 2d 561 (Ala.1979)."

485 So. 2d at 709-710.

In Ex parte CSX Transportation, Inc., 533 So. 2d 613, 615 (Ala. Civ. App. 1987), this court citing, Mallory v. Paradise, 173 N.W.2d 264 (Iowa 1969), and Wilson v. Hudson, 429 So. 2d 1090 (Ala. Civ. App. 1983),

recognized that, although § 12-11-9, Ala. Code 1975, requires the transfer of a case filed in a circuit court that is within the exclusive jurisdiction of a district court, when a circuit court and a district court have concurrent jurisdiction, "the plaintiff may choose to which court to resort."

In the present case, Glenn sued Woodruff in the district court seeking \$5,150 in damages. Glenn's initial pleading did not fall within the two courts' concurrent jurisdictional limits of \$6,000.01 to \$20,000. Therefore, Woodruff was not entitled to remove the action to the circuit court under § 12-12-37. Woodruff's filing of a compulsory counterclaim has no impact on the removal of the action under § 12-12-37. The plain language of § 12-12-37 provides that "[a]ny civil action brought in district court of which the circuit court has concurrent jurisdiction may be removed by a defendant or defendants to the circuit court of the county in which the action is pending." Section 12-12-37 further provides that the defendant may seek removal within 30 days "after receipt ... of a copy of the initial pleading" filed by the plaintiff. Moreover, to include the amount of Woodruff's counterclaim for the purpose of determining whether removal under § 12-12-37 was proper would thwart the



jurisdiction of the district court. As this court explained in Miller v. Culver, 447 So. 2d 761, 764 (Ala. Civ. App. 1984):

"We feel compelled at this point to comment on the propriety of transferring a case from district court to circuit court on motion of the defendant such as we have in this instance. Although not at issue in the instant case, it appears that there exists no requirement that a case should be transferred to circuit court from district court because of a demand for a jury trial or for asserting a counterclaim that exceeds the jurisdictional amount of the district court.

"It appears that a demand for a jury trial, or the filing of an 'excessive' counterclaim, is not sufficient grounds for transferring an appropriate case originally filed in district court to circuit court. To do so would thwart the jurisdiction of the district court. See §§ 12-11-9 and 12-12-71, Ala. Code (1975), and Rule 13, Alabama Rules of Civil Procedure."

Similarly, a defendant in a civil action may remove an action from a state court to a federal court if the federal court has original subject-matter jurisdiction. Removal can be based on diversity jurisdiction or federal-question jurisdiction. See 28 U.S.C. § 1441. A federal district court has federal-question jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States. See 28 U.S.C. § 1331. This jurisdiction must inhere in the plaintiff's claim, rather than be based on a defense or counterclaim. See Louisville & Nashville R.R. v. Mottley, 211 U.S. 149, 152 (1908) ("It is the settled interpretation of these

words, as used in this statute, conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action, and asserts that the defense is invalidated by some provision of the Constitution of the United States."). A federal district court has diversity jurisdiction over cases between citizens of different states when the amount in controversy exceeds \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332. "Courts have generally refused to consider the damages pled in permissive counterclaims as supplying the amount in controversy necessary for removal of a diversity action." Quality Mgmt., LLC v. Time & Place World, LLC, 521 F. Supp. 2d 83, 85 (D.D.C. 2007) (quoting Iowa Lamb Corp. v. Kalene Indus., Inc., 871 F. Supp. 149,1156 (D. Iowa 1994)). Although there is a split of authority, "the near unanimous rule" is that even the amount alleged in a compulsory counterclaim cannot be used to meet the amount-in-controversy requirement. Thrash v. New England Mut. Life Ins. Co., 534 F. Supp. 2d 691, 696-97 (S.D. Miss. 2008); see also First Guar. Bank & Trust Co. v. Reeves, 86 F. Supp. 2d 1147 (M.D. Fla.

2000) (noting that counterclaim should not be considered when determining whether the amount-in-controversy requirement of § 1332 is satisfied in the context of removal) (collecting cases); Conference Am., Inc., v. Q.E.D. Int'l, 50 F. Supp. 2d 1239 (M.D. Ala. 1999) (noting that the majority of courts in other circuits have held that the amount in controversy for diversity-jurisdiction removal purposes should be determined solely by referring to the plaintiff's complaint, without regard to any subsequently filed counterclaims) (collecting cases).

"A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment. Hunt Transition & Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 274 (Ala. 2000)." Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008). Woodruff's appeal is, therefore, dismissed, and the circuit court is instructed to vacate the void default judgment. We further note that any actions taken by the circuit court in case number CV-22-900410 are a nullity because that action arose from Woodruff's filing of a second notice of removal that, in addition to being duplicative, was filed in the district court and not in

CL-2022-1019

the circuit court as required under § 12-12-37 and, like this action, is outside that court's jurisdiction.

APPEAL DISMISSED.

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