Rel: September 29, 2023

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2022-0847

Steven Mark Hayden

v.

William B. Cashion; Jim Pino & Associates, P.C.; James C. Pino; Jeffrey Brian Pino; Vicky Harkness; Deputy Steve Cotten; Magistrate Kelsey Finklea; and Judge John E. Rochester

Appeal from Elmore Circuit Court
(CV-22-900001)

PER CURIAM.

Steven Mark Hayden appeals from a judgment of the Elmore Circuit Court ("the trial court") dismissing his action against Jim Pino and Associates, P.C.; James C. Pino; Jeffrey Brian Pino; Vicky Harkness

(collectively referred to as "the Pino defendants"); William B. Cashion; circuit judge John Rochester; former magistrate for the City of Birmingham Kelsey Finklea; and Jefferson County sheriff's deputy Steve Cotten. He also appeals from two post-dismissal orders awarding Cashion and the Pino defendants attorney fees and costs pursuant to the Alabama Litigation Accountability Act ("the ALAA"), § 12-19-270 et seq., Ala. Code 1975. For the reasons discussed herein, we affirm the judgment in part and dismiss the appeal in part with instructions.

Background

Hayden appeared pro se before the trial court and now appears pro se before this court. On January 3, 2022, he commenced an action in the trial court asserting dozens of "facts" arising out of a previous action in which the defendants in this case were involved in one way or another. The "facts" that Hayden alleged in his complaint included, among other things, accusations that Judge Rochester was impersonating a judge and that he had ordered a "sham" hearing in the previous action; that, at the Pino defendants' request, Judge Rochester had threatened to put Hayden in jail unless Hayden produced certain documents and sat for a deposition; that Hayden had delivered the documents and answered

questions "under threat of force"; that an Elmore County sheriff's deputy "was present next to Rochester enforcing the power of imposter Rochester in the court"; that a court bailiff "with a loaded GLOCK 19 on his hip [was] ready to use lethal force against Hayden if Hayden resisted the unlawful orders of imposter Rochester"; that he had reported Cashion to the Internal Revenue Service alleging Cashion had committed tax fraud and had "funded" the Pino defendants; and that the Pino defendants had recommended that Cashion file a criminal complaint against Hayden in Jefferson County to intimidate Hayden from exposing Cashion's "tax fraud." Throughout his complaint, Hayden referred to Magistrate Finklea, who he said had signed the arrest warrant against him, by a vulgar misspelling of her name.

In his complaint, Hayden said that the purpose of the current action "includes exposure of corruption." He also stated that he knew he would "not get justice in Jeffco or Alabama Supreme Court. But later God will give these defendants the judgment they deserve." He peppered his claims with quotes from the Book of Revelation and from other books of the Bible. The causes of action Hayden asserted in this action were abuse of process, false arrest, and negligence per se.

The complaint, requests for admissions, and other documents contained in the record indicate that Hayden based his contention that Judge Rochester was an "imposter" on the fact that Judge Rochester lives in Clay County and not in the judicial circuit in which the trial court is located.

On February 1, 2022, the supreme court entered an order signed by Chief Justice Tom Parker noting that all the judges of the Elmore Circuit Court had recused themselves in Hayden's action and appointing Judge Samuel Junkin. Hayden filed a motion for Judge Junkin to admit that he did not live in the judicial circuit in which the trial court was located, and he asserted that Judge Junkin was not qualified to preside over his action. It appears from the motion that Hayden sought to have Judge Junkin arrested.

On February 8, 2022, Deputy Cotten filed a motion to dismiss or, in the alternative, for a summary judgment in which he argued that Hayden failed to state a claim upon which relief could be granted against him because, Deputy Cotten said, he was afforded absolute immunity for his performance of duties as a deputy sheriff. Deputy Cotten attached to the motion his affidavit and the warrant for Hayden's arrest. On February 9,

2022, the Pino defendants filed a motion to dismiss Hayden's complaint for failure to state a claim upon which relief may be granted. The Pino defendants also moved for attorney fees and costs under the ALAA. Cashion filed a motion to dismiss on February 11, 2022, on the same grounds as the Pino defendants. He, too, sought an attorney fee pursuant to the ALAA. On February 25, 2022, Judge Rochester and Magistrate Finklea filed a motion to dismiss Hayden's claims against them based on sovereign immunity, common-law judicial immunity, and, in Magistrate Finklea's case, statutory judicial immunity.

The trial court scheduled a hearing on the defendants' motions for 10:00 a.m. on April 1, 2022. At 7:51 a.m. on April 1, 2022, Hayden filed a fourteen-page amended complaint to add Chief Justice Parker and Judge Junkin as defendants; at 8:47 a.m., he filed a "motion to deem admission admitted," saying: "The facts are true. The Truth does not change. The Truth will control the Almighty's Judgement not the lies of men. Repent."; at 8:52 a.m., he again filed the "motion to deem admission admitted"; at 8:59 a.m., he filed a notice of discovery stating that Chief Justice Parker's letter to Judge Junkin "proves Junkins [sic] was not qualified as resident of" the judicial circuit in which the trial court is

located; at 9:06 a.m., he filed the same discovery notice, attaching the order appointing Judge Junkin to preside over Hayden's action in the trial court; at 9:54 a.m. -- six minutes before the hearing was to begin -- he filed an "Opposition to Motion for Summary Judgement of All Defendants"; and at 10:01 a.m. -- one minute after the hearing began -- he filed a notice of dismissal stating that he "hereby dismisses all defendants in this case."

On April 1, 2022, the trial court entered an order "disallowing" Hayden's voluntary dismissal, stating that it did not comply with Rule 41, Ala. R. Civ. P., and that the defendants had each served their answers on Hayden. The same day, the trial court entered a judgment noting that Hayden had not been present at the hearing and that no attorney representing Hayden had appeared. The trial court further noted that the hearing had been made available to Hayden through a videoconferencing service and that a link to that service had appeared at 9:58 a.m. It stated that it had resent the link to Hayden at 10:03 a.m. but that Hayden had never appeared.

In its order, the trial court disallowed the amended complaint that Hayden had filed the morning of the hearing, finding that it was without

any legal basis or justification. The trial court treated Hayden's apparent challenge to Judge Junkin's authority to preside over the action as a motion to recuse, which it denied. The trial court dismissed all claims against all defendants, finding that the claims against Cashion and the Pino defendants "were without any justification, a complete abuse of the legal process[,] and intended to harass these Defendants." It then granted the motions for fees and costs those defendants had filed and requested that those parties provide affidavits justifying their requested costs and fees within ten days.

On April 12, 2022, the trial court entered separate orders for the Pino defendants and for Cashion awarding them attorney fees and costs pursuant to the ALAA. The trial court ordered Hayden to pay the Pino defendants attorney fees of $7,364.50 plus costs of $48, for a total of $7,412.50, and to pay Cashion an attorney fee of $1,575 and costs of $48.60, for a total of $1,623.60.

Hayden filed a postjudgment motion "for new judge to alter or amend orders of April Fools Day April 1 2022." The trial court denied the motion. Hayden timely appealed to the supreme court, which transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

Analysis

We first address the contention of Cashion and the Pino defendants that Hayden's appeal was untimely and that, therefore, this court lacks jurisdiction to consider the appeal. Specifically, they argue that Hayden's "Rule 59 motion for new judge to alter or amend orders of April Fool's Day April 1, 2022," which he filed on May 1, 2022, sought the review of a nonfinal order and did not toll the forty-two-day period in which Hayden had to appeal. We disagree.

Regardless of the title Hayden gave to his postjudgment motion, he filed it after the trial court entered its orders of April 12, 2022, awarding Cashion and the Pino defendants attorney fees. The first paragraph of the postjudgment motion challenged the propriety of that award. Although the motion was not artfully crafted, it also challenged the trial court's dismissal of the complaint with prejudice rather than recognizing Hayden's voluntarily dismissal of the complaint, which would be without prejudice. See Rule 41(a)(1), Ala. R. Civ. P. In other words, the postjudgment motion raised the same issues before the trial court that Hayden now raises on appeal.

On May 3, 2022, the trial court entered an order denying Hayden's postjudgment motion, which it characterized as a motion to alter, amend, or vacate. Therefore, Hayden had until June 14, 2022, to file a timely notice of appeal. He did so on June 13, 2022. Hayden's appeal is therefore timely.

As to the merits of the appeal, Hayden contends that his voluntary dismissal was proper under Rule 41 and that the trial court erred in disallowing that voluntary dismissal. Hayden argues that the rule does not include any technical requirements. Rule 41(a)(1), reads in pertinent part that "an action may be dismissed by the plaintiff without order of court … by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." The rule further provides that a voluntary dismissal is generally without prejudice, except in certain circumstances not applicable here.

Dismissal under Rule 41(a)(1) is a question of law and, therefore, is reviewable de novo. Riverstone Dev. Co. v. Nelson, 91 So. 3d 678, 681 (Ala. 2012). The Rule 41 Committee Comments on 1973 Adoption explain that "[t]he purpose of Rule 41(a) is to facilitate voluntary dismissals but

to limit them to an early stage of the proceedings before issue is joined." A voluntary dismissal under Rule 41 terminates the action when the notice of the plaintiff's intent to dismiss is filed with the clerk. Hammond v. Brooks, 516 So. 2d 614 (Ala. 1987). Moreover, a voluntary dismissal deprives a trial court of the power to proceed further with an action and renders void any order the trial court enters after the filing of the notice of voluntary dismissal. Ex parte Sealy, L.L.C., 904 So. 2d 1230, 1236 (Ala. 2004).

Hayden argues that a motion to dismiss is not an answer or a motion for a summary judgment and that, because none of the defendants named in the current action filed an answer or a motion for a summary judgment, the trial court erred in "disallowing" his notice of voluntary dismissal. Hayden is correct in his view of the law. A motion to dismiss does not terminate a plaintiff's right to voluntarily dismiss the action pursuant to Rule 41(a)(1)(i), unless the motion to dismiss is converted into a motion for a summary judgment. Synovus Bank v. Mitchell, 206 So. 3d 569, 571 n.2 (Ala. 2016). It is undisputed that, except for defendant Deputy Cotten, the defendants did not file answers or motions for a summary judgment before Hayden filed his notice of dismissal.

Therefore, as to those defendants, Hayden's filing of the notice of dismissal ended the litigation as to those defendants, deprived the trial court of the power to proceed further with the action aimed at them, and rendered all orders relating to them entered after its filing void. Ex parte Sealy, 904 So. 2d at 1236. Because, a void order will not support an appeal, Hayden's appeal of the April 1, 2022, order, to the extent that order purported to dismiss all the defendants other than Deputy Cotten, is due to be dismissed with instructions to the trial court to vacate that portion of the order purporting to dismiss those defendants.

Deputy Cotten is the only defendant whose motion to dismiss included an alternative motion for a summary judgment with exhibits for the trial court's consideration. Because Deputy Cotten had already filed a motion for a summary judgment when Hayden filed his notice of voluntary dismissal, Hayden's voluntary dismissal notice was not applicable to his claims against Deputy Cotten. See Riverstone Dev. Co., 91 So. 3d at 681 (Ala. 2012) (holding that if the conditions of Rule 41(a)(1) are not met, voluntary dismissal can only be upon an order of the court).

Therefore, the trial court's April 1, 2022, judgment dismissing the claims against Deputy Cotten with prejudice is due to be affirmed.[1]

Hayden next contends that, because he filed his notice of voluntary dismissal of his action within ninety days of the filing of his complaint, the trial court erred in awarding attorney fees and costs under the ALAA to the Cashion and Pino defendants. In support of his argument, he cites § 12-19-272(d), part of the ALAA, which provides:

> "No attorneys' fees or costs shall be assessed if a voluntary dismissal is filed as to any action, claim or defense within 90 days after filing, or during any reasonable extension

[1]The fact that Deputy Cotten had filed a motion for a summary judgment does not affect the application of the notice of dismissal to the other defendants. See Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 2362 at 250-52 (2d ed. 1994) (explaining that in a case involving multiple defendants, it is permissible to voluntarily dismiss just some of the defendants); Madsen v. Park City, 6 F.Supp. 2d 938, 943 (N.D. Ill. 1998) ("[T]he fact that some of the defendants have already answered does not preclude invoking [Rule 41(a)(1), Fed. R. Civ. P.,] as to other defendants, Aggregates (Carolina), Inc. v. Kruse, 134 F.R.D. 23, 25-26 (D.P.R. 1991)."); Plains Growers By & Through Florists' Mut. Ins. Co. v. Ickes-Braun Glasshouses, Inc., 474 F.2d 250, 254 (5th Cir. 1973), and cases cited therein. We note that our reliance on cases from federal courts is derived from the well-recognized precept that federal decisions construing a federal rule that is similar to an Alabama rule are persuasive authority in construing the Alabama rule. Ex parte Novus Utilities, Inc., 85 So. 3d 988, 996 (Ala. 2011). The Committee Comments on 1973 Adoption of Rule 41, Ala. R. Civ. P., note that Alabama's Rule 41 "is substantially the same as the corresponding federal rule."

> granted by the court, for good cause shown, on motion filed prior to the expiration of said 90-day period."

We agree with Hayden that the trial court erred in awarding attorney fees, but we find a more fundamental flaw in the award than the one he cites.

In Ex parte Sealy, our supreme court considered whether, after a voluntary dismissal of an action under Rule 41(a)(1), a trial court retained jurisdiction to award an attorney fee and concluded that it did not. 904 So. 2d at 1236. In that case, the plaintiff brought claims of breach of contract and fraud against the defendant related to a real estate transaction. The defendant filed a motion to dismiss or for a change of venue. The plaintiff filed an amended complaint asserting additional claims. After the case was transferred to a different venue, the defendant moved the trial court to strike certain parts of the amended complaint, and he requested, "in general terms," an award of attorney fees and costs. 904 So. 2d at 1231.

Two months later, the plaintiff filed in the trial court a notice of voluntary dismissal of its action under Rule 41(a), indicating in that notice that the defendant had not yet served it with an answer or a motion for a summary judgment. A week later, the trial court purported

to dismiss the action. After several weeks passed, the defendant filed an answer and asserted counterclaims against the plaintiff. Ultimately, the trial court entered another order purporting to dismiss the action, including the defendant's counterclaims, but, in that order, it set a hearing on the defendant's claim for an award of attorney fees and costs. 904 So. 2d at 1231-32.

The plaintiff filed a petition for a writ of mandamus with the supreme court in which it contended that the second order of dismissal was void; it sought writs directing the trial court to vacate that order and restraining the trial court from taking any further action in the case. The plaintiff argued that its filing of a notice of voluntary dismissal, which occurred before the defendant had filed an answer or a motion for a summary judgment, had effectively dismissed the action and that any action the trial court had taken after the filing of that notice was void. The supreme court agreed with the plaintiff and issued the requested writs. 904 So. 2d at 1234-36.

The supreme court reasoned that the effect of the plaintiff's filing of its notice of dismissal pursuant to Rule 41(a)(1)(i) was "'to render the proceedings a nullity and leave the parties as if the action had never been

brought.'" 904 So. 2d at 1236 (quoting In re Piper Aircraft Distrib. Sys. Antitrust Litig., 551 F.2d 213, 219 (8th Cir. 1977)). Specifically with regard to the trial court's setting of the defendant's claim for an attorney fee and costs for a hearing, the supreme court explained that the plaintiff's filing of its notice of dismissal

> "ipso facto deprived the trial court of the power to proceed further with the action and rendered all orders entered after its filing void. Moreover, the notice 'carried down with it [all] previous proceedings and orders in the action, and all pleadings, both of [the plaintiff] and [the defendant], and all issues, with respect to [the plaintiff's] claim,' In re Piper Aircraft [Distrib. Sys. Antitrust Litig.], 551 F.2d [213,] 219 [(8th Cir. 1997)] (emphasis added), including the request for attorney fees and costs set forth in [the defendant's] … motion to strike. Thus, the trial court was without jurisdiction to enter its August 12, 2004, order rendering a judgment in favor of [the defendant] and purporting to reserve for further consideration [the defendant's] request for attorney fees and costs."

904 So. 2d at 1236.[2]

In the present case, as noted above, Hayden's filing of his notice of voluntary dismissal under Rule 41(a)(1)(i) effectively ended the litigation

[2]We recognize that in Green v. Beard & Beard Attorneys, 255 So. 3d 775, 777-78 (Ala. Civ. App. 2017), this court affirmed an award of an attorney fee pursuant to the ALAA after the filing of a notice of voluntary dismissal under Rule 41(a)(1). In Green, we did not address our supreme court's decision in Sealy. To the extent Green conflicts with Sealy, we are bound to follow Sealy. See § 12-3-16, Ala. Code 1975.

as to Cashion and the Pino defendants, the only ones who sought an award of attorney fees and costs. Based on our supreme court's rationale in Sealy, we are constrained to conclude that the trial court did not retain jurisdiction, once Hayden filed that notice, to take any further action on Cashion's and the Pino defendants' requests for attorney fees and costs, and its orders of April 12, 2022, awarding those fees and costs are therefore void. Because, as noted above, a void order will not support an appeal, Hayden's appeal of those orders is due to be dismissed with instructions to the trial court to vacate those orders.

AFFIRMED IN PART; DISMISSED IN PART WITH INSTRUCTIONS.

Thompson, P.J., and Hanson, J., concur.

Edwards and Fridy, JJ., concur specially, with opinions.

Moore, J., concurs in part and dissents in part, with opinion.

EDWARDS, Judge, concurring specially.

I concur in the main opinion. I write specially to note that I do not read Green v. Beard & Beard Attorneys, 255 So. 3d 775 (Ala. Civ. App. 2017), which is referenced in footnote 2 of the main opinion and involved consideration of a claim by the defendant against a party other than the plaintiff who had filed the notice of dismissal, as being in conflict with Ex parte Sealy, L.L.C., 904 So. 2d 1230 (Ala. 2004).[3]

[3]In Green, an attorney filed an unauthorized-libel claim, purportedly on behalf of the plaintiff, but the plaintiff voluntarily dismissed that claim after she had retained new counsel and after Beard & Beard Attorneys had filed a claim for attorney's fees against the plaintiff's original attorney; Beard & Beard Attorneys did not file a claim for attorney's fees against the plaintiff herself. See 255 So. 3d at 777; see also Ala. Code 1975, § 12-19-272(a) ("Except as otherwise provided in this article, in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs against any attorney or party, or both, who has brought a civil action, or asserted a claim therein, or interposed a defense, that a court determines to be without substantial justification, either in whole or part." (Emphasis added.)). It has been stated that, "[o]rdinarily, the defendant's counterclaim can stand on its own and a dismissal can be granted on the plaintiff's claims without affecting the counterclaim's adjudication." 9 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2365 (4th ed. 2020). It stands to reason that a defendant's claim against a party other than the plaintiff would likewise not be affected by the plaintiff's voluntary dismissal of his or her action. Even to the extent that certain language in Ex parte Sealy might be read as being in tension with that conclusion and the quoted statement from Federal Practice & Procedure, I do not read that case as purporting to

Also, based on certain statements made in Ex parte Sealy, L.L.C., the supreme court has relied on authorities discussing Rule 41, Fed. R. Civ. P., to conclude that a dismissal pursuant to Rule 41(a)(1)(i), Ala. R. Civ. P., creates a jurisdictional preclusion as to further proceedings in the plaintiff's action, including as to a motion for attorney's fees that had been filed by the defendant against the plaintiff, although that court recognized that the issue was not perfectly analogous to the issue of subject-matter jurisdiction. Ex parte Sealy, L.L.C., 904 So. 2d at 1235; see also Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1079 (7th Cir. 1987) (cited with approval in Ex parte Sealy as to the preclusive effect of a notice of dismissal for purposes of an award of attorney fees as part of costs in certain circumstances).

Szabo discussed issues related to the use of the jurisdictional analogy and distinguished between an award of attorney fees under 42 U.S.C. § 1988, which, it said, was prohibited upon a voluntary dismissal

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address the issue whether a claim like the claim against the original attorney at issue in Green, a cross-claim between defendants, or a defendant's claim against a co-plaintiff of the plaintiff who filed a notice of dismissal, are dismissed simply based on the plaintiff's filing of a notice of dismissal of his or her own action.

pursuant to Rule 41(a)(1)(i), Fed. R. Civ. P., and those circumstances in which

> "[a]n award of fees … is more like a sanction for contempt of court than like a disposition on the merits …. The obligation to answer for one's act accompanies the act; a lawyer cannot absolve himself of responsibility by dismissing his client's suit. A dismissal under Rule 41(a)(1)(i)[, Fed. R. Civ. P.,] is significant to the extent it stops the running of attorneys' fees. A plaintiff who files a complaint in violation of the Rule and quickly dismisses it usually will find that sanctions are minimal. But they are not zero -- and here they may not be minimal. Round-the-clock work by a large law firm does not come cheap. If Szabo-Digby imposed costs on its adversary and the judicial system by violating Rule 11, [Fed. R. Civ. P.,] it must expect to pay."

823 F.2d at 1079; see also Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 398 (1990) ("We conclude that petitioner's voluntary dismissal did not divest the District Court of jurisdiction to consider respondents' Rule 11[, Fed. R. Civ. P.,] motion."); Pacific Enters. Oil Co. (USA) v. Howell Petroleum Corp., 614 So. 2d 409 (Ala. 1993) (acknowledging the similarities in language and purpose of the Alabama Litigation Accountability Act ("the ALAA"), Ala. Code 1975, § 12-19-270 et seq., and Rule 11, Fed. R. Civ. P.). However, the supreme court did not discuss such distinctions in making its broad pronouncement in Ex parte Sealy that the notice of dismissal "ipso facto deprived the trial court of the

power to proceed further with the action and rendered all orders entered after its filing void." 904 So. 2d at 1236; see also Walker Bros. Inv., Inc. v. City of Mobile, 252 So. 3d 57 (Ala. 2017).[4] Unless the supreme court

[4]In addition to Szabo, the supreme court also was aware of Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990), when it decided Ex parte Sealy because the supreme court referenced that Cooter & Gell had abrogated on other grounds Johnson Chemical Co. v. Home Care Products, Inc., 823 F.2d 28, 30 (2d Cir. 1987). See 904 So. 2d 1230. Also, we must presume that the supreme court was aware of the ALAA, which was enacted in 1987, Act No. 87-186, Ala. Acts 1987. The ALAA was necessary because Rule 11, Ala. R. Civ. P., unlike its federal counterpart, did not authorize an award of attorney fees. See Williams v. Board of Water & Sewer Comm'rs of City of Prichard, 763 So. 2d 938, 942 (Ala. 1999) ("Unlike its counterpart in the Federal Rules of Civil Procedure, Alabama's Rule 11 does not provide for the imposition of attorney fees and expenses as a penalty for its violation."); Advisory Committee Notes to the 1983 amendment to Rule 11, Fed. R. Civ. P. ("The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation."); see also Pacific Enters. Oil Co. (USA) v. Howell Petroleum Corp., 614 So. 2d 409 (Ala. 1993).

Because the basis for the attorney-fee request in Ex parte Sealy was included as part of a motion to strike portions of an amended complaint, that request appears to have been sanctions-based rather than merits-based, e.g., a counterclaim to enforce an attorney-fee clause in a contract. See 904 So. 2d at 1231; see also Ex parte Horn, 718 So. 2d 694, 702 (Ala. 1998) ("Under the American rule, the parties to a lawsuit bear the responsibility of paying their own attorney fees. However, the law recognizes certain exceptions to this rule, and attorney fees are recoverable when authorized by statute, when provided by contract, or when justified by special equity," such as the common-benefit rule.). Under the circumstances, I do not believe the present case can be

refines that decision to draw distinctions like those discussed in Szabo or to otherwise state that a trial court is not divested of jurisdiction as to sanctions-based attorney-fee claims, this court is bound to treat as void any order purporting to award attorney fees to a defendant from a plaintiff after that plaintiff has filed a notice of dismissal under Rule 41(a)(1)(i). See Ala. Code 1975, § 12-3-16.

Furthermore, I am concerned over the possible extension of the jurisdictional-error analysis to the 90-day provision under Ala. Code 1975, § 12-19-272(d), as argued by Steven Mark Hayden. I do not agree with the argument that § 12-19-272(d) is jurisdictional such that any order entered in violation of that Code section would be void.[5] However,

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distinguished from Ex parte Sealy merely because that case did not specifically reference the ALAA as the basis for the attorney-fee request or because the attorney-fee request at issue in Ex parte Sealy was not specific as to its basis. The ALAA includes no specificity requirement for purposes of a motion or a claim for attorney fees; indeed, a trial court can raise the matter ex mero motu. See Ala. Code 1975, § 12-19-272(c). Also, the language used in Ex parte Sealy is not consistent with the existence of a jurisdictional exception for certain types of attorney-fees claims. See also Szabo, 823 F.2d at 1077 (noting that a statement that "the court lacks 'jurisdiction', impl[ies] that the district judge could not have awarded fees under any statute or rule").

[5]Section 12-19-272(d) states: "No attorneys' fees or costs shall be assessed if a voluntary dismissal is filed as to any action, claim or defense within 90 days after filing, or during any reasonable extension granted

assuming Hayden's argument was correct, it may be difficult in application based on the need to harmonize Ex parte Sealy and the intent of the legislature as expressed in § 12-19-272(d).

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by the court, for good cause shown, on motion filed prior to the expiration of said 90 day period." It appears to me that any violation of § 12-19-272(d) involves waivable legal error (similar to an affirmative defense, which must be timely raised) and that the trial court could have concluded that Hayden did not timely raise the issue because he made no reference to § 12-19-272(d) in his notice of dismissal, because he filed that omissive notice after the hearing on the motion for attorney's fees had already commenced, and because he did not appear at the hearing to raise § 12-19-272(d) as a defense against the claim for attorney's fees. Instead, he presented his § 12-19-272(d) argument for the first time in his postjudgment motion. Under the circumstances, I do not believe the trial court had an obligation to consider whether it had erred under § 12-19-272(d). Cf. Travelers Indem. Co. of Connecticut v. Worthington, 252 So. 3d 645, 660-63 (Ala. 2017) (discussing the general rule that a party may not raise an affirmative defense for the first time in a postjudgment motion).

FRIDY, Judge, concurring specially.

I concur fully in the main opinion. I write specially to address Judge Moore's special writing in which he dissents from that part of the opinion dismissing the appeal with instructions to the trial court to set aside its orders awarding attorney fees under the Alabama Litigation Accountability Act ("the ALAA"), § 12-19-270 et seq., Ala. Code 1975.

The main opinion states, "[i]n Ex parte Sealy, [L.L.C., 904 So. 2d 1230, 1236 (Ala. 2004), our supreme court considered whether, after a voluntary dismissal of an action under Rule 41(a)(1), [Ala. R. Civ. P.,] a trial court retained jurisdiction to award an attorney fee and concluded that it did not." ___ So. 3d at ___. In Ex parte Sealy, our supreme court discussed the federal authorities that had interpreted the effect of a voluntary dismissal under Rule 41(a)(1), Fed. R. Civ. P., and, based on those authorities, explained that a plaintiff's filing of a notice of dismissal

> "ipso facto deprived the trial court of the power to proceed further with the action and rendered all orders entered after its filing void. Moreover, the notice 'carried down with it [all] previous proceedings and orders in the action, and all pleadings, both of [the plaintiff] and [the defendant], and all issues, with respect to [the plaintiff's] claim,' In re Piper Aircraft [Distrib Sys. Antitrust Litig.], 551 F.2d [213,] 219 [(8th Cir. 1997)] (emphasis added), including the request for attorney fees and costs set forth in [the defendant's] … motion to strike. Thus, the trial court was without jurisdiction to

> enter its August 12, 2004, order rendering a judgment in favor of [the defendant] and purporting to reserve for further consideration [the defendant's] request for attorney fees and costs."

904 So. 2d at 1236.

As Judge Moore points out, generally, Alabama courts look to the federal courts' construction of the Federal Rules of Civil Procedure to interpret the Alabama Rules of Civil Procedure because our rules "represent an adaptation to the Alabama practice of rules of civil procedure already adopted for the federal courts." Committee Comments on 1973 Adoption, Rule 1, Ala. R. Civ. P.; see also Thomas v. Liberty Nat'l Life Ins. Co., 368 So. 2d 254, 256 (Ala. 1979). However, although a federal court's interpretation of a Federal Rule of Civil Procedure can constitute persuasive authority, Rowan v. First Bank of Boaz, 476 So. 2d 44, 46 (Ala. 1985), it does not bind our construction of a coordinate Alabama Rule of Civil Procedure, First Baptist Church of Citronelle v. Citronelle-Mobile Gathering, Inc., 409 So. 2d 727, 729 (Ala. 1981).

Obviously, the United States Supreme Court had already published Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990), the primary case on which Judge Moore relies in his special writing, when our supreme court decided Ex parte Sealy. Thus, in interpreting Rule 41(a)(1), Ala. R.

Civ. P., our supreme court appears to have rejected the approach that the federal courts had taken in considering whether an award of an attorney fee was permissible after the filing of a voluntary dismissal pursuant to Rule 41(a)(1) and decided, instead, that after such a filing, a trial court was without jurisdiction to award an attorney fee. The Sealy court did not make an exception for requests for attorney fees made pursuant to the ALAA. Indeed, the opinion in Sealy does not state the basis on which the defendant there sought an award of an attorney fee, and I do not believe it proper for this court to assume that the request was made on a basis other than the ALAA. In this respect, I agree with Judge Edwards's view, set forth in her special concurrence, that Sealy is simply not distinguishable from this case merely because the supreme court did not reference the ALAA specifically in its opinion.

Although, like Judge Moore, I agree with the reasoning of the federal decisions that conclude that a trial court maintains jurisdiction to award an attorney fee after a voluntary dismissal, the decisions of the Alabama Supreme Court are binding on this court, see § 12-3-16, Ala. Code 1975, and "we have no authority to overrule that court's decisions." State Farm Mut. Auto. Ins. Co. v. Carlton, 867 So. 2d 320, 325 (Ala. Civ.

App. 2001). As a result, when, as here, a precedent of our supreme court "has direct application in a case" before us, this court "should follow the case which directly controls," leaving to the supreme court "the prerogative of overruling its own decisions." Agostini v. Felton, 521 U.S. 203, 237 (1997) (cleaned up).

In sum, I agree with the main opinion that Sealy compels us "to conclude that the trial court did not retain jurisdiction, once Hayden filed [his notice of voluntary dismissal], to take any further action on Cashion's and the Pino defendants' requests for attorney fees and costs," ___ So. 3d at ___, and its orders awarding those fees and costs were void and could not sustain an appeal.

MOORE, Judge, concurring in part and dissenting in part.

I concur in all aspects of the main opinion except the dismissal of that part of the appeal relating to the award of attorney's fees under the Alabama Litigation Accountability Act ("the ALAA"), Ala. Code 1975, § 12-19-270 et seq.

In Ex parte Sealy, L.L.C., 904 So. 2d 1230 (Ala. 2004), Sealy, L.L.C. ("Sealy"), filed a complaint against Napoleon Banks in the Tuscaloosa Circuit Court asserting claims of breach of contract and fraud relating to the sale of a house. After Banks filed a motion to dismiss, the case was transferred to the Hale Circuit Court ("the circuit court"), where Banks filed a motion for attorney's fees and costs. The circuit court heard oral argument on Banks's motions on January 13, 2004, at a motion docket that Sealy did not attend. On February 13, 2004, before Banks filed an answer or a motion for a summary judgment and before the circuit court had ruled on any motions, Sealy voluntarily dismissed its complaint, without prejudice, pursuant to Rule 41(a), Ala. R. Civ. P. On August 12, 2004, the circuit court entered an order purporting to grant Banks's motion to dismiss, albeit with prejudice, and setting a hearing to consider his request for attorney's fees and costs. Sealy filed a petition for a writ

of mandamus and a petition for a writ of prohibition in the supreme court in which it asserted that the August 12, 2004, order was void and that the circuit court had lost jurisdiction over the case after Sealy had filed its notice of voluntary dismissal. The supreme court agreed, and it issued the writs, reasoning that the voluntary dismissal effectively concluded the litigation, ended the circuit court's jurisdiction over the case, and precluded the circuit court from acting further on the claims of the parties, including Banks's request for attorney's fees and costs.

In reaching its decision in Ex parte Sealy, the supreme court indicated that it was following federal cases construing Rule 41, Fed. R. Civ. P., which is substantially the same as Rule 41, Ala. R. Civ. P. 904 So. 2d at 1235. The supreme court cited a federal case holding that, once a voluntary dismissal has been filed, a federal district court cannot award costs to the opposing party. 904 So. 2d at 1236 (citing Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1077 (7th Cir. 1987)). However, in Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990), the United States Supreme Court held that, after a plaintiff has filed a notice of voluntary dismissal under Rule 41(a), Fed. R. Civ. P., a federal district court retains

jurisdiction to impose attorney's fees and costs against the plaintiff as a sanction for violating Rule 11, Fed. R. Civ. P.

At the time the decision was issued in Cooter & Gell, Rule 11, Fed. R. Civ. P., provided, in pertinent part:

> "The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

The Supreme Court determined that the purpose of federal Rule 11 was to deter the filing of frivolous lawsuits and that it would be consistent with that purpose for a district court to have the power to impose the sanctions authorized by the rule even after a voluntary dismissal. Moreover, the Supreme Court concluded that "nothing in the language of

Rule 41(a)(1)(i), Rule 11, or other statute or Federal Rule terminates a district court's authority to impose sanctions after such a dismissal." 496 U.S. at 395. The Court also said:

> "The filing of complaints, papers, or other motions without taking the necessary care in their preparation is a separate abuse of the judicial system, subject to separate sanction. As noted above, a voluntary dismissal does not eliminate the Rule 11 violation. Baseless filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay. Even if the careless litigant quickly dismisses the action, the harm triggering Rule 11's concerns has already occurred. Therefore, a litigant who violates Rule 11 merits sanctions even after a dismissal. Moreover, the imposition of such sanctions on abusive litigants is useful to deter such misconduct. If a litigant could purge his violation of Rule 11 merely by taking a dismissal, he would lose all incentive to 'stop, think and investigate more carefully before serving and filing papers.' Amendments to Federal Rules of Civil Procedure, 97 F.R.D. 165, 192 (1983) (Letter from Judge Walter Mansfield, Chairman, Advisory Committee on Civil Rules) (Mar. 9, 1982)."

496 U.S. at 398.

The ALAA provides, in pertinent part:

> "(c) The court shall assess attorneys' fees and costs against any party or attorney if the court, upon the motion of any party or on its own motion, finds that an attorney or party brought an action or any part thereof, or asserted any claim or defense therein, that is without substantial justification, or that the action or any part thereof, or any claim or defense therein, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including but not

> limited to abuses of discovery procedures available under the Alabama Rules of Civil Procedure.
>
> "(d) No attorneys' fees or costs shall be assessed if a voluntary dismissal is filed as to any action, claim or defense within 90 days after filing, or during any reasonable extension granted by the court, for good cause shown, on motion filed prior to the expiration of said 90 day period."

Ala. Code 1975, § 12-19-272. Like Rule 11, Fed. R. Civ. P., the ALAA is intended to deter frivolous actions by authorizing Alabama courts to impose sanctions upon a party or an attorney for asserting a claim or defense "without substantial justification." See Ala. Code 1975, § 12-19-271(1) (defining "without substantial justification" to mean "frivolous, groundless in fact or in law, or vexatious, or interposed for any improper purpose ...."). When a party files a complaint that lacks substantial justification, the party violates the ALAA, just as a party who signs a frivolous complaint filed in a federal district court violates Rule 11, Fed. R. Civ. P. Just as under federal law, a subsequent voluntary dismissal of a complaint should not deprive an Alabama court of jurisdiction to impose sanctions against a party for that violation which has already occurred.

The only material difference between federal law and Alabama law on this point is that § 12-19-272(d) prohibits an Alabama trial court from

imposing sanctions under the ALAA if the plaintiff voluntarily dismisses a frivolous complaint within 90 days or within such period as the court allows. In Green v. Beard & Beard Attorneys, 255 So. 3d 775, 777-78 (Ala. Civ. App. 2017), this court, in an opinion I authored, held that, pursuant to § 12-19-272(d), an Alabama trial court retains jurisdiction to impose attorney's fees under the ALAA after a voluntary dismissal and that the court may impose such sanctions under the ALAA if the plaintiff did not timely dismiss a frivolous complaint. I believe that Green was correctly decided because it complies with the reasoning of the United States Supreme Court in Cooter & Gell and with the intent of our supreme court in Ex parte Sealy to follow federal caselaw in construing our Rule 41. The main opinion concludes that the broad language in Ex parte Sealy encompasses claims based on the ALAA, but in Ex parte Sealy, our supreme court did not mention the ALAA and the opinion does not indicate that Banks was basing his claim for attorney's fees on that statute, so Ex parte Sealy does not clearly apply in this circumstance. Notably, the parties in Green did not even cite Ex parte Sealy as authority on this point, probably for this reason. Therefore, I would apply Green in this appeal and hold that Hayden's filing of the voluntary

dismissal did not deprive the Elmore Circuit Court ("the trial court") of jurisdiction to impose attorney's fees under the ALAA.

The issue in this case is not whether the trial court had jurisdiction to consider imposing sanctions under the ALAA, but whether the trial court could impose such sanctions in light of the timing of the filing of the voluntary dismissal. Hayden commenced the underlying action by filing a complaint on January 3, 2022. He filed his notice of voluntary dismissal on April 1, 2022, within 90 days of the filing of the complaint. Based on the clear and unambiguous language of § 12-19-272(d), the trial court could not impose attorney's fees under the ALAA in favor of those defendants against which the dismissal was effective. Accordingly, in my opinion, the judgment awarding attorney's fees to Jim Pino and Associates, P.C., James C. Pino, Jeffrey Brian Pino, Vicky Harkness, and William B. Cashion should be reversed for that reason.