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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

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**The Water Works Board of the City of Birmingham**

v.

**Alabama Surface Mining Commission and Mays Mining, Inc.**

**Appeal from the Walker Circuit Court  
(CV-21-900190)**

EDWARDS, Judge.

The Water Works Board of the City of Birmingham ("the WWB") appeals from a summary judgment entered by the Walker Circuit Court in favor of the Alabama Surface Mining Commission ("the ASMC") and Mays Mining, Inc. ("MMI"), regarding the renewal of a mining permit that the ASMC had issued to MMI and that the WWB had challenged.

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This appeal involves a proceeding under the Alabama Surface Mining Control and Reclamation Act of 1981 ("the Reclamation Act"), Ala. Code 1975, § 9-16-70 et seq. See also Ala. Admin. Code (Surface Mining Comm'n), r. 880-x-5a-.01 et seq. Review procedures under the Reclamation Act "take precedence over the Alabama Administrative Procedure Act." Ala. Code 1975, § 9-16-79. Any petition challenging the regulatory authority's approval or disapproval of a permit or the renewal of a permit is first heard by a hearing officer from the Division of Hearings and Appeals, after which a party may petition the ASMC for review on the administrative record. Ala. Code 1975, § 9-16-79(2)-(3); see also Ala. Code 1975, § 9-16-72(15) (defining the "regulatory authority" as "[t]he Alabama Surface Mining Commission acting by and through its director or his designee"). After receiving decisions from the regulatory authority, the hearing officer, and the ASMC, a party "may secure a judicial review [of the ASMC's decision] by filing a notice of appeal in the circuit court of the county in which the [ASMC] maintains its principal office," i.e., Walker County. § 9-16-79(4)b. "The cause shall be tried de novo in said circuit court," which

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"shall have jurisdiction to determine the reasonableness and lawfulness of the order of the [ASMC]. Upon a finding by the court that the order is not reasonable or lawful, or not supported by the clear preponderance of the evidence, the cause shall be remanded to the [ASMC] for further proceedings in accordance with the provisions of this article."

§ 9-16-79(6). See also Ex parte Van American Ins. Co., 843 So. 2d 180, 185 (Ala. 2002) ("Pursuant to [Ala. Code 1975,] § 9-16-79(6), the circuit court has jurisdiction only to determine the reasonableness and lawfulness of the order issued by the regulatory agency. ... [E]ven if the trial court had found the [ASMC's] order to be unreasonable or unlawful it had no authority to modify it. The court's only statutory remedy was to remand the cases to the [ASMC] for the [ASMC] to enter an order that was reasonable and that comported with the law.").

The WWB's dispute regarding the permit at issue has a protracted history. The regulatory authority entered an order issuing permit no. P-3957-64-17-S ("the permit") to Reed Minerals, Inc. (a predecessor applicant to MMI), on October 30, 2012. The permit had an expiration date of October 29, 2017. See Ala. Code 1975, § 9-16-82(a) (stating that, generally, "[t]he term of a permit shall not exceed five years"); see also

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Ala. Admin. Code (Surface Mining Comm'n), r. 880-X-8k-.12(3). The permit area was near a water-intake facility owned by the WWB.

The WWB filed with the Division of Hearings and Appeals a petition for review regarding the issuance of the permit. The WWB contended that no adequate survey of the permit area had been performed, particularly in relation to potential residual pollutants from the previous use of part of the permit area as a plywood processing facility ("the brownfield site") from approximately 1969 to 1980. A hearing officer for the Division of Hearings and Appeals entered an order denying the WWB's petition. Likewise, on petition for review to the ASMC, it entered an order denying the WWB's petition.

On August 8, 2014, the WWB filed a notice of appeal to the Jefferson Circuit Court regarding the ASMC's denial of the WWB's petition; that appeal was assigned case no. CV-14-000432 ("the 2014 appeal").<sup>1</sup> On

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<sup>1</sup>Before June 2016, venue of a judicial-review proceeding under the Reclamation Act was proper in Jefferson County, which was the location of the WWB's principal office. See Ex parte Water Works Bd. of City of Birmingham, 177 So. 3d 1167, 1173 (Ala. 2014); see also Act No. 2015-383, Ala. Acts 2015 (amending § 9-16-79(4)b. to provide for venue "in the circuit court of the county in which [the ASMC] maintains its principal office").

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December 31, 2014, Reed Minerals, Inc., transferred the permit to Centennial Natural Resources LLC ("Centennial"), and, presumably, Centennial was added as a party to the 2014 appeal. The Jefferson Circuit Court held ore tenus proceedings over three days. See § 9-16-79(6). On October 28, 2016, the Jefferson Circuit Court entered a "Final Order on Appeal" reversing and remanding the ASMC's decision ("the October 2016 final order"). The October 2016 final order stated that the terms of the permit were "reasonable and supported by the clear preponderance of the evidence as regards most, but not all, of the proposed mining site." The October 2016 final order continued:

"[T]he court is not convinced from the testimony and evidence presented that [the ASMC] has fully and adequately considered the potential environmental impacts unique to mining those portions of this site which were formerly used as a plywood processing plant. ... [T]he court was presented with no experiential data or studies or testimony from experience regarding the mining of brownfield sites. Similarly, the court was not presented with evidence that [the ASMC] considered requiring affirmative precautionary measures to avoid or eliminate any potential environmental impact unique to mining those portions of this site which were formerly used as a plywood processing plant, such as (a) including a 'condition' in the permit that 'no disturbance is to occur on any part of the permit' where the former plywood processing plant [and its various facilities] were located, or (b) if surface mining operations are allowed on these parts of the site, requiring a

reasonable layer of the soil from these areas to be transported to an appropriate landfill rather than re-deposited on the site during the reclamation process or, even, (c) requiring a reasonable layer of the soil from these areas to be tested for potential pollutants once the soil has been disturbed and, then, if any pollutants are detected at unsatisfactory levels, transporting that soil to an appropriate landfill rather than re-depositing it on the site. In other words, the court is not convinced from the testimony and evidence presented that the reasonable course with regard to mining those portions of the site which were formerly used as a plywood processing plant is to simply not mine there at all, or to mine those portions in a different way or with a different monitoring system in place that what was used at [other greenfield site locations for other mines], in order to avoid a situation where potential pollutants from the former industrial areas are released into the environment."

Quoting Ex parte Van American Insurance Co., 843 So. 2d at 185, the October 2016 final order remanded the cause to the ASMC for it to "'enter an order that [i]s reasonable and that comport[s] with the law.'"

On December 8, 2016, the ASMC entered an order remanding consideration of the permit to "the regulatory authority for further assessment of the potential environmental impacts, if any, that may result from disturbance of the former plywood plant and related features, and for consideration of any conditions, restrictions or limitations to incorporate into the permit as the result of any findings so made."

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According to the ASMC, its December 2016 order tolled the permit term while the permit was under further consideration.

On January 11, 2017, the ASMC sent Centennial a status letter regarding the reconsideration of the permit. The status letter stated that no surface coal mining could occur until the permit was approved. The status letter also requested that Centennial conduct further site investigation regarding the environmental issues noted in the October 2016 final order and submit "such additional site evaluation and risk assessment information" to the ASMC if Centennial wanted to proceed with its permit application.

According to the ASMC, Spectrum Environmental, Inc., on behalf of Centennial, thereafter performed a soil and groundwater study on the brownfield site and submitted that study ("the Spectrum report") to the ASMC. The Spectrum report concluded that the brownfield site had very low or nondetectable concentrations of the pollutants that had been of concern to the WWB, and that surface mining would not materially impact the water intake owned by the WWB. The ASMC reissued the permit to Centennial on May 21, 2018, authorizing it to mine the

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brownfield portions of the permit area. The permit was reissued effective May 21, 2018, and had an expiration date of May 22, 2019. As to that issue, the permit stated: "This permit was previously issued on October 30, 2012, for a 5-year term. Approval of the permit was remanded for further consideration 1 year and 1 day (366 days) prior to the end of the permit term. As the term of a permit may not exceed 5 years[, ...] this permit shall expire May 22, 2019."

On June 29, 2018, Centennial transferred the permit to MMI. On July 20, 2018, the WWB filed in the 2014 appeal a "Motion to Review and Remand Re-Issued Permit." The WWB argued to the Jefferson Circuit Court that the reissued permit did not comply with the terms of the October 2016 final order. The WWB made no argument that the permit had expired on October 29, 2017, or that the ASMC could not suspend or toll the term of the permit pending further proceedings. Also, the WWB made no argument that the ASMC had exceeded its authority on remand or gone outside the mandate of the Jefferson Circuit Court by reconsidering the permit as to surface coal mining of the brownfield portions of the permit area.

MMI filed a motion to substitute itself as a party in the 2014 appeal and that motion was granted. MMI and the ASMC also filed a motion arguing that the Jefferson Circuit Court lacked jurisdiction to review the reissued permit. On October 10, 2018, the Jefferson Circuit Court conducted a hearing on the WWB's motion to review and remand. On November 2, 2018, the Jefferson Circuit Court entered an order stating that it had jurisdiction to review the reissued permit to determine whether the permit "considered the matters identified by the court" in the October 2016 final order. After reviewing the reissued permit and the Spectrum report, the Jefferson Circuit Court concluded that the ASMC had not resolved the court's concerns expressed in the October 2016 final order. The November 2018 order concluded:

"[T]he court continues to hold that the mining of the brownfield portions of the site at issue in this case are unreasonable, unlawful, and unsupported by the clear preponderance of the evidence. Therefore, those aspects of the [reissued permit] REMAIN STAYED and the [reissued permit] is REMANDED back to [the ASMC] for further proceedings.

"Nothing in this Order shall affect the court's prior ruling that surface mining may be conducted on the greenfield portions of this site."

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On January 23, 2019, MMI filed with the ASMC an application for renewal of the permit, see Ala. Code § 9-16-82; Ala. Admin. Code (Surface Mining Comm'n), r. 880-X-8k-.12(4), and a renewed permit was issued on May 28, 2019 ("the renewed permit"). The renewed permit had an expiration date of May 22, 2024, and stated that all terms and conditions of the permit remained in effect, subject to compliance with the October 2016 final order and the November 2018 order of the Jefferson Circuit Court, which the ASMC understood to have approved the permit as to surface mining on the greenfield portions of the permit area, but to have stayed such mining on the brownfield portion of the permit area pending further proceedings by the ASMC. The renewed permit further stated that MMI had submitted a "Soil and Groundwater Environmental Assessment Report" that depicted the footprint of the plywood plant that had operated on a part of the permit area; that MMI must receive a permit revision based on a "Special Overburden Handling Plan" addressing the potential issues regarding certain pollutant residues before conducting surface coal-mining operations within that footprint;

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and that MMI must "distinctly flag the boundaries of the former plywood plant" before "additional disturbance within the permit area."

On June 28, 2019, "out of an abundance of caution," the WWB filed with the Division of Hearings and Appeals a petition for review regarding the renewed permit.<sup>2</sup> The WWB argued that the permit had expired on October 29, 2017, because no timely renewal application had been filed before that date, and that the renewed permit therefore was void. See Ala. Admin. Code (Surface Mining Comm'n), r. 880-X-8m-.07(2)(a) ("An application for renewal of a permit shall be filed ... at least 120 days before expiration of the existing permit term."). In addition to challenging the timeliness of MMI's renewal application, however, the WWB also argued that the renewed permit was based on improper findings and conditions regarding the brownfield portion of the permit

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<sup>2</sup>On June 27, 2019, the WWB filed an "Objection to Renewal of Permit After Remand" in the Jefferson Circuit Court, presumably in the 2014 appeal. Based on the materials in the administrative record, on September 5, 2019, the Jefferson Circuit Court entered an order determining that the issue whether the permit had expired must first be considered and addressed by the ASMC. The September 2019 order is not included in that record, however, or elsewhere in the record on appeal.

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area, which, according to the WWB, had not been adequately delineated to distinguish that portion of the permit area from the greenfield portion of the permit area.

On March 23, 2021, the WWB filed with the Division of Hearings and Appeals a motion to set its petition for review for a hearing. The record does not disclose the reason for the delay relating to the hearing or the WWB's request for a hearing. After a hearing on the WWB's motion to set a hearing, the hearing officer, based on an agreement of the parties, entered a scheduling order on March 31, 2021. The scheduling order directed the parties to submit by April 16, 2021, briefs regarding whether the renewal application had been timely filed and any responsive briefs by April 30, 2021. The scheduling order also stated that, if the hearing officer determined that no issues of material fact existed that required a hearing, he would issue an order regarding the timeliness of the renewal application and the validity of the renewed permit and would schedule further proceedings for a determination of remaining issues, including "the perimeter of the 'brownfield' property and the definition of said area."

The parties filed respective briefs with the hearing officer on April 16, 2021. In its brief, the WWB acknowledged that it had challenged both the validity of the permit based on the timing of the renewal application and also "findings and conditions" regarding the surface mining of the brownfield site. On April 28, 2021, before the period had expired for the parties to file responsive briefs, the hearing officer entered an "Order Regarding Renewal of Permit." In the April 2021 order, the hearing officer agreed with the ASMC's argument that the permit term had been tolled during the period of its reconsideration and that MMI's renewal application was timely filed. The April 2021 order further stated that "nothing in this Order is due to be or should be construed as a ruling on any issue concerning the substantive propriety of the renewal permit, including specifically the issues pertaining to the mining of and in the vicinity of the 'brownfield' portions of the permit location." Also, the April 2021 order stated that a virtual conference would be scheduled to identify any and all remaining issues and to schedule any further proceedings.

On April 29, 2021, MMI filed its brief in response to the WWB's initial brief. The following day the ASMC and the WWB filed their

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respective responsive briefs to the initial briefs. The WWB noted in its responsive brief that the hearing officer had entered the April 2021 order before the due date for the responsive briefs.

On May 27, 2021, the WWB filed with the ASMC a petition for review of the April 2021 order and a brief in support of its petition. The WWB argued that the hearing officer had erred by concluding that the permit had not expired on October 29, 2017, and that the MMI's renewal application was timely filed, but again acknowledged that its challenge regarding the merits of the renewed petition had not yet been addressed. Also on May 27, 2021, a few hours after the WWB filed its petition for review with the ASMC, the hearing officer entered an amended order regarding the issuance of the renewed permit.<sup>3</sup> The May 2021 order acknowledged that the April 2021 order had been prematurely entered in relation to the period provided for filing responsive briefs, but again

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<sup>3</sup>Because we are disposing of this appeal on jurisdictional grounds relating to finality, see discussion, infra, we do not address the issue whether the WWB's May 2021 petition for review to the ASMC deprived the hearing officer of jurisdiction to enter an amended order or whether the ASMC has jurisdiction to consider a petition for review regarding an interlocutory order entered by a hearing officer.

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concluded that the permit expiration date had been May 22, 2019, that MMI had timely filed its renewal application, and that nothing in the May 2021 order was intended to address "the substantive propriety of the renewal permit." Likewise, the May 2021 order stated that the hearing officer would schedule a virtual conference to discuss any and all remaining issues and to schedule any further proceedings that might be required.

Based on allegations made by the WWB and the admissions of the ASMC and MMI as to certain of those allegations, it appears to be undisputed that, on June 10, 2021, the ASMC "accepted" the WWB's petition for review of the April 2021 order. On June 25, 2021, the hearing officer, "having heard from counsel for all parties concerning the scheduling of further hearings in this matter," entered a scheduling order regarding the remaining issues as to the renewal permit, particularly "those issues pertaining to the definition of the 'brownfield' site" within the permit area and "the conditions, restrictions or limitations which are or should be place on mining" that location. The scheduling order set the

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remaining issues for a hearing to be held on August 23, 2021, and, if necessary, August 24, 2021.

On June 30, 2021, the WWB filed with the ASMC a petition for review challenging the May 2021 order and a brief in support of its petition. The WWB again argued that the hearing officer had erred by concluding that the permit had not expired on October 29, 2017, and that the MMI's renewal application was timely filed, but again acknowledged that its challenge regarding the merits of the renewed petition had not yet been addressed. On July 9, 2021, the hearing officer again entered a scheduling order that appears to be substantively identical to the June 2021 scheduling order. The hearings did not occur as scheduled, however.

The ASMC took no action regarding the WWB's petition for review of the May 2021 order. According to the WWB, that petition for review was therefore denied by operation of law pursuant to § 9-16-79(3)a., which states that the ASMC may

"grant or deny a petition for review. If the [ASMC] takes no action on a petition within 30 days [after the petition has been filed], it shall be deemed denied. If the [ASMC] grants a petition for review but fails to act within 90 days of granting

the petition, the [ASMC] shall be deemed to have entered a final decision affirming the order of the hearing officer."

On August 26, 2021, the WWB filed a notice of appeal in the Walker Circuit Court ("the trial court") regarding the ASMC's purported denial of its petition for review of the May 2021 order.<sup>4</sup> The WWB requested that the trial court enter an order declaring that MMI's renewed permit was void because, according to the WWB, the original permit had expired as a matter of law on October 29, 2017, before MMI had filed a timely renewal application.

On September 23, 2021, MMI filed in the trial court a motion to dismiss the WWB's appeal because, according to MMI, no final judgment had been entered from which the WWB might appeal to the trial court and, thus, according to MMI, the trial court lacked jurisdiction to consider the WWB's appeal. Also, MMI argued that the WWB had not

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<sup>4</sup>The WWB did not challenge any ruling regarding the April 2021 order, and, as stated in note 3, *supra*, we express no opinion on the issue whether the ASMC had jurisdiction to consider the merits of the petition for review of the April 2021 order, which reflected an interlocutory ruling by the hearing officer. The record includes no indication that the ASMC has denied that petition and no argument has been presented regarding whether that petition could be or was denied by operation of law.

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exhausted its administrative remedies based on the remaining proceedings that were to occur before the hearing officer. The following day, the ASMC filed in the trial court a motion to dismiss the WWB's appeal, contending that the administrative review regarding MMI's permit renewal had not concluded and, thus, according to the ASMC, the WWB's appeal was premature, and the trial court lacked subject-matter jurisdiction.

As noted above, the hearing officer apparently did not hold the hearing scheduled in August 2021. However, on October 15, 2021, the hearing officer entered a scheduling order that stated that, after "a conference call with counsel for all parties," the final hearing of all remaining issues regarding the WWB's petition would be held on December 7, 2021, and, if necessary, December 8, 2021. On November 15, 2021, the WWB filed a motion to dismiss with the hearing officer, purportedly based on an agreement of the parties. WWB requested, "[i]n consideration of the ASMC and [MMI] withdrawing their motion to dismiss" filed in the trial court, the entry of an order dismissing its remaining challenges to the renewed permit so long as the dismissal

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order "specifically provid[ed] that such dismissal has no effect on the appeal de novo pending before the [trial court]."

On November 18, 2021, the hearing officer entered an order granting the WWB's motion to dismiss its petition "as to the remaining issues therein," noting that all parties consented to the dismissal. The November 2021 order further acknowledged the WWB's appeal to the trial court and stated that "the dismissal of the remaining unadjudicated issues in the [p]etition shall not have any effect on the review which is now pending in the [trial court], and this Order should not be construed as impacting the pending review in any fashion."

On November 24, 2021, MMI and the ASMC filed in the trial court a joint motion to withdraw their respective motions to dismiss. The joint motion stated:

"4. After discussion between all the parties, [the WWB] moved to dismiss all remaining issues which were pending before the ... Division of Hearings and Appeals in order that this appeal would be ripe for adjudication. [MMI and the ASMC] consented to an order being entered dismissing any and all remaining issues and to proceed forward with this appeal.

"5. On November 18, 2021, ... the [h]earing [o]fficer entered the Order Granting Motion to Dismiss which

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dismissed all remaining issues before the ... Division of Hearings and Appeals, causing this appeal to be timely and ripe for adjudication before this Court. ...

"6. For the reasons stated above [MMI's and the ASMC's respective] motions for dismiss the appeal are now moot."

Attached to the joint motion was a copy of the hearing officer's order granting the WWB's motion to dismiss.

On November 29, 2021, the trial court entered an order granting the joint motion and stating that MMI's and the ASMC's pending motions to dismiss were denied as moot. Thereafter the ASMC and MMI filed in the trial court their respective answers regarding the WWB's August 2021 appeal to that court. In April 2022, the parties filed in the trial court respective cross-motions for a summary judgment. After a hearing on the cross-motions for a summary judgment, the trial court entered a judgment on September 19, 2022, finding that MMI's permit was timely renewed and valid, granting the respective motions for a summary judgment filed by MMI and the ASMC, and denying the motion for a summary judgment filed by the WWB.

On October 10, 2022, the WWB filed a notice of appeal to this court. On appeal, the WWB argues that the permit had expired before MMI

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filed its renewal application and that the ASMC therefore erred by approving the renewal permit. We pretermite discussion of the WWB's arguments, however, because the WWB's appeal to the trial court was taken from a nonfinal order. Thus, the trial court, and, as a result, this court, lack jurisdiction to consider the WWB's appeal.

Addressing the procedural quirks that occur in administrative appeals, particularly at the agency level, can be challenging. See Alabama Dep't of Labor v. Barnett, 341 So. 3d 1096, 1100 (Ala. Civ. App. 2021) ("The labyrinthine procedural history that resulted from the division of two issues in Barnett's unemployment-compensation claim into two administrative cases, one of which concerned only an affirmative defense, and the subsequent failure of the board to expressly adjudicate those issues concurrently, has raised numerous interesting questions." (footnote omitted)). As we determined in Barnett, however, the rules pertaining to finality can provide a certain clarifying safety for purposes of determining the jurisdiction of the courts, see id. at 1100-01, and of preventing the premature exercise of jurisdiction. That is particularly true in the present case, where the legislature has clearly stated that

"[t]he circuit court shall not permit an appeal unless the person filing such appeal has exhausted his administrative remedies as provided by [the Reclamation Act]." Ala. Code 1975, § 9-16-79(4)b.<sup>5</sup>

As this court has stated, when no final decision in an administrative case has been entered by an agency for purposes of appeal to a circuit court,

"the appeal is due to be dismissed, ex mero motu, because the circuit court never acquired subject-matter jurisdiction. See Singleton v. Graham, 716 So. 2d 224, 225-26 (Ala. Civ. App. 1998) (noting that a circuit court's lack of subject-matter jurisdiction follows an appeal to this court and warrants dismissal upon discovery of the jurisdictional defect in the record on appeal); see also Eitzen v. Medical Licensure Comm'n of Alabama, 709 So. 2d 1239, 1240 (Ala. Civ. App. 1998) (dismissing appeal from circuit court's judgment affirming final decision of administrative agency because record revealed that the circuit court's jurisdiction to review the decision had not properly attached)."

Alabama Dep't of Econ. & Cmty. Affs. v. Community Serv. Programs of W. Alabama, Inc., 65 So. 3d 396, 402 (Ala. Civ. App. 2010). Any judgment or order purporting to adjudicate, on the merits, such a prematurely

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<sup>5</sup>Section 9-16-79(4)b. authorizes a circuit court to grant "temporary relief" to a surface coal mining operator regarding certain cessation orders that the ASMC fails or refuses to stay pending further proceedings, but no such order is at issue in the present case.

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taken appeal is void. See Alabama Pub. Serv. Comm'n v. McGill, 260 Ala. 361, 362, 71 So. 2d 12, 14 (1954) ("The circuit court sitting as a court of review in the exercise of its special statutory and limited jurisdiction was without jurisdiction unless the record showed on its face that the case is one where that court has authority to act. Jurisdiction in such a case is never presumed and, if it does not appear, the judgment or decree is void."). Also, "if the decree of the circuit court is not appealable[,] we must dismiss the appeal without a motion. ... A judgment or decree void for want of jurisdiction is not appealable." Id.

Regarding the parties' attempt to remedy the finality defect by having the WWB purportedly dismiss its remaining challenges to the substance of the renewed permit, after the WWB filed its August 2021 notice of appeal in the trial court, neither the ASMC nor the hearing officer had jurisdiction over the administrative case regarding MMI's renewed permit. See Lord Genesh, Inc. v. Valley Nat'l Bank, [Ms. 1210003, Aug. 19, 2022] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2022) (quoting Foster v. Greer & Sons, Inc., 446 So. 2d 605, 608 (Ala. 1984), overruled on other grounds by Ex parte Andrews, 520 So. 2d 507 (Ala. 1987), for "the general

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rule that jurisdiction of a case can be in only one court at a time"). Also, "[t]he parties may not waive lack of subject-matter jurisdiction, and subject-matter jurisdiction may not be conferred by consent." Espinoza v. Rudolph, 46 So. 3d 403, 413 (Ala. 2010). When a court has no subject-matter jurisdiction at the time of the initial filing, that defect cannot be cured after the fact; instead, the court is obligated to dismiss the action for lack of jurisdiction. See State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999); id. at 1028 (quoting Reynolds v. United States, 748 F.2d 291, 292 (5th Cir. 1984), for the proposition that "a complaint filed pursuant to the Federal Tort Claims Act ('FTC') before the 'final denial' of the plaintiff's claim by the 'appropriate Federal agency' as required by the FTC was due to be dismissed for lack of subject-matter jurisdiction, and an amended complaint filed after the 'final denial' was also due to be dismissed because it could relate back only to a date on which the trial court lacked subject-matter jurisdiction").

Based on the foregoing, the trial court's September 2022 judgment is void. Also, for the sake of clarity, we note that the November 2021

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order entered by the hearing officer is also void. The WWB's appeal from the September 2022 judgment is dismissed, albeit with instructions to the trial court to vacate that judgment and to enter a judgment dismissing the WWB's appeal to that court for lack of jurisdiction because such appeal was taken from an interlocutory order.

APPEAL DISMISSED WITH INSTRUCTIONS.

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