

Rel: August 25, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2023-0346

Ex parte Alabama Department of Labor

PETITION FOR WRIT OF MANDAMUS

(In re: Tahir Sultan

v.

**Fitzgerald Washington, in his official capacity as Secretary of
the Alabama Department of Labor)**

(Houston Circuit Court, CV-23-900094)

FRIDY, Judge.

The Alabama Department of Labor ("the department") has filed a petition for writ of mandamus directing the Houston Circuit Court to dismiss Tahir Sultan's appeal of the department's decision denying him

unemployment-compensation benefits. For the reasons discussed herein, we deny the petition.

Background

The materials submitted in support of and in opposition to the department's petition indicate that on February 5, 2021, the department mailed to Sultan a notice stating that he had been disqualified or determined to be ineligible for unemployment-compensation benefits for a claim dated June 21, 2020. Also on February 5, 2021, the department mailed to Sultan a notice stating that he had been "overpaid" on his June 21, 2020, claim in the amount of \$9,916. The notices advised Sultan that he had the right to appeal from both determinations but that, as to each determination, his "appeal rights end[ed] 15 calendar days from the date of th[e] notice if mailed, or 7 days if delivered." The notices expressly stated that "[t]he appeal must be received within the prescribed time, whether by mail or fax."

There is no dispute that the department mailed the notices to Sultan on February 5, 2021, so he had fifteen days, until February 20, 2021, to file his appeals with the hearings and appeals division of the department. See § 25-4-91(d)(1), Ala. Code 1975. However, February 20,

2021, was a Saturday, so, as the department's notices indicated, Sultan's appeals were due by Monday, February 22, 2021. The materials before us include a letter from Sultan to the hearings and appeals division of the department in which he wrote that he did not agree with the statement of overpayment and that he could not repay the overpaid benefits. That letter was stamped as received by the hearings and appeals division on March 2, 2021.

On October 29, 2021, the department mailed to Sultan a notice of its intent to recover the \$9,916 in overpaid benefits. On November 5, 2021, Sultan sent a letter to the department requesting a waiver of that debt. On January 10, 2022, the department mailed to Sultan a "Request for Waiver of Overpayment Questionnaire." Sultan completed the questionnaire on January 18, 2022. On August 3, 2022, the department mailed Sultan a "Decision on Request for Waiver of Repayment of Overpayment," in which it wrote that the waiver committee of the department, after reviewing the record and Sultan's application for a waiver, "hereby denies the repayment amount totaling \$9,916.00." Sultan sent a letter to the hearings and appeals division of the

department on August 17, 2022, asking for reconsideration of that decision.

On September 13, 2022, the department mailed to Sultan a notice advising him that his March 2, 2021, appeal of the determination that he was ineligible to receive unemployment-compensation benefits for his claim of June 21, 2020, had been denied because it was untimely. However, the department's notice advised Sultan that it was granting him an appeal on the issue of the timeliness of his appeal. On November 17, 2022, the department mailed a notice to Sultan advising him that, on December 13, 2022, there would be a hearing on the issue of the "finality of determination." An administrative-hearing officer from the department held a telephonic hearing as scheduled. Neither party submitted a transcript of that hearing to this court.

On December 14, 2022, the hearings and appeals division of the department issued a decision finding that, during the December 13, 2022, telephonic hearing, Sultan had acknowledged that he had received the notices of determination. The decision further stated that the hearings and appeals division of the department had received a written request for appeal and review on March 2, 2021, via fax transmission. The

decision concluded that, because the hearing and appeals division had received Sultan's appeals of the February 5, 2021, determinations of ineligibility for benefits and of overpayment after February 22, 2021, those appeals were untimely and that the administrative-hearing officer was without the power or authority to alter or amend the determinations. The decision further determined that the February 5, 2021, determinations were final and that the administrative-hearing officer did not have jurisdiction to decide the case on its merits. The decisions advised Sultan that he had until December 29, 2022, to file an appeal with the department's board of appeals ("the board"). See § 25-4-92(c), Ala. Code 1975.

On February 6, 2023, the board denied Sultan's application for leave to appeal. The board informed Sultan that its decision would become final ten days after the date on which the notification was mailed to the parties, and that, within thirty days after the decision became final, he could file a notice of appeal with the circuit court. See § 25-4-95, Ala. Code 1975. On March 10, 2023, Sultan filed in the circuit court a timely notice of appeal from the denial of his claim for unemployment-compensation benefits. In his notice, Sultan asked the circuit court to find

him "eligible for unemployment compensation benefits previously received and not subject to an overpayment."

On March 29, 2023, the department moved to dismiss Sultan's appeal on the ground that the circuit court lacked jurisdiction because Sultan's appeal of the original February 5, 2021, determination finding him ineligible for benefits had been filed with the hearing and appeals division of the department eight days late. By that time, the department argued, the hearings and appeals division no longer had the statutory power to affirm, modify, or set aside the February 5, 2021, determination because it had become final before the hearings and appeals division of the department had received the appeal.

After holding an evidentiary hearing on the motion to dismiss on April 23, 2023, during which Sultan testified, the circuit court entered an order on May 1, 2023, denying the department's motion to dismiss. A copy of the transcript of that hearing is not included in the materials submitted to us. However, in the May 1 order, the circuit court wrote that Sultan "testified that he made multiple attempts to fax the notice of appeal in a timely manner and then mailed the notice of appeal." The circuit court also noted that the department contended that it did not

receive the notice of appeal until March 2, 2021, as evidenced by the previously described notice included in the materials submitted to us. Based on the evidence presented to it, the circuit court determined that the timeliness of Sultan's notice of appeal was disputed. The circuit court pointed out that the department had granted Sultan a hearing on the issue of the timeliness of his original appeal. After that hearing, the circuit court wrote, the department notified Sultan on February 6, 2023, that it had disallowed his application for leave to appeal and outlined Sultan's right to appeal to the circuit court. Sultan "timely filed THIS appeal with this circuit court," the circuit court wrote, and thus, it stated, it had jurisdiction over "this matter."

On May 22, 2023, the department filed a timely petition for a writ of mandamus with this court, asking us to direct the circuit court to set aside its May 1, 2023, order and to enter an order dismissing Sultan's appeal.

Analysis

The department argues that Sultan's appeal in the circuit court must be dismissed because his appeals from the February 5, 2021, determinations to the administrative-hearing officer were untimely;

thus, it says, the circuit court has no subject-matter jurisdiction to consider the appeal. Lack of subject-matter jurisdiction may be raised at any time, and the question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000). To obtain a writ of mandamus, the department must demonstrate (1) that it has a clear legal right to the order sought; (2) an imperative duty upon the trial court to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court. Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995).

In support of its position that the circuit court lacks subject-matter jurisdiction, the department cites § 25-4-91(d)(1), Ala. Code 1975, which provides that, "[u]nless any party to whom notice of determination is required to be given shall, ... within 15 calendar days after such notice was mailed to his last known address, file an appeal from such decision, such decision shall be deemed final." The department also relies on Alabama Department of Labor v. Grayson, 141 So. 3d 1081 (Ala. Civ. App. 2013). In that case, the department received Rickell Grayson's appeal of the denial of her claim for unemployment-compensation

benefits more than fifteen days after the department had mailed the notice of the denial to her. The department determined that the appeal was untimely, and Grayson appealed to the Jefferson Circuit Court.

As in this case, the department filed a motion to dismiss Grayson's appeal to the circuit court on the ground that her appeal was untimely. The circuit court found that Grayson had mailed her appeal to the department the day before the filing deadline after the post office had assured her that it would be delivered the next day. However, the department did not receive the appeal until after the fifteen-day deadline. In denying the motion to dismiss, the circuit court found that, under the facts, "it would violate the fundamental beneficent purpose of the [Unemployment Compensation] Act[, § 25-4-1 et seq., Ala. Code 1975,] as well as basic principles of equity and fairness to deny [Grayson] a hearing on the merits.'" Id. at 1082. As to the merits of Grayson's appeal, the circuit court remanded the appeal to the department to consider Grayson's claim for unemployment-compensation benefits. Id.

The department appealed the circuit court's judgment to this court, and we reversed it. Quoting Burgess v. State Department of Industrial Relations, 637 So. 2d 1366, 1368 (Ala. Civ. App. 1994), we explained that

an appeal is not a "'vested right but is by the grace of statute and must be perfected pursuant to the time and manner prescribed in the controlling statute,'" and we added that courts are not authorized to extend the statutorily mandated time to file an appeal of the denial of an unemployment-compensation claim. Id. at 1082-83. We concluded that, because Grayson's initial administrative appeal to the department had been untimely, the circuit court had erred in denying the department's motion to dismiss her appeal and in remanding the appeal to the department. Id.

The department also relies on this court's opinion in Ex parte Alabama Department of Labor, 265 So. 3d 272 (Ala. Civ. App. 2018). In that case, an employee attempted to appeal the department's June 2, 2017, denial of her claim for unemployment-compensation benefits, but the department received the appeal after the date on which it could have been timely filed. Nonetheless, the department's hearing and appeals division notified the employee that it would hold a hearing solely on the issue of the timeliness of the appeal. The employee did not appear for that hearing, however, so the untimeliness of the notice of appeal remained undisputed. After the hearing, the hearings and appeals

division determined that the department's decision to deny the employee unemployment-compensation benefits was final and that the hearing officer was "'without jurisdiction to decide the case on its merits.'" Id. at 274.

The employee filed a timely application for leave to appeal from that decision, and the application was denied. The employee then filed a notice of appeal to the Bibb Circuit Court. The department filed a motion to dismiss the appeal, challenging the circuit court's subject-matter jurisdiction and contending that the employee's failure to seek administrative review of the June 2, 2017, decision within the time provided by § 25-4-91(d)(1) barred her right to judicial review. The circuit court denied the department's motion to dismiss. The department petitioned for a writ of mandamus. Id. at 275. This court, relying on Grayson, supra, agreed with the department's position that, because the employee's appeal of the June 2, 2017, decision had been untimely, the circuit court did not have jurisdiction to entertain the employee's appeal, and we directed the circuit court to dismiss that appeal. Id. at 276.

Grayson and Ex parte Department of Labor are distinguishable from the present case on the basis that, in those cases, it was undisputed

that the appeal of the initial determination to the department's hearings and appeals division had been untimely, where, here, that question is in dispute. The department does not contend that Sultan's appeal of the December 14, 2022, decision on the issue of timeliness was submitted outside the time allowed for appealing that decision, nor does it contend that his appeal to the circuit court was untimely. As the circuit court emphasized, Sultan "timely filed THIS appeal" with the circuit court. Thus, we agree with the circuit court that it has jurisdiction to consider the propriety of the department's decision determining that Sultan's appeal was untimely.

Indeed, the circuit court's reasoning has caused us to reconsider some of the language we used in our opinions in Grayson and Ex parte Department of Labor. In both of those cases, we considered the issue of the timeliness of the initial administrative appeal as one implicating the circuit court's jurisdiction, but we should not have done so. In those cases, as in this case, the question presented by appeal to the circuit courts was whether the board had correctly determined that the original administrative appeals had been untimely. As noted above, unlike in this case, there was no question of fact as to that issue in those cases; instead,

it was undisputed that the initial administrative appeals had been untimely. However, instead of directing the circuit courts in those cases to affirm the board's timeliness determinations, we concluded that the appeals to the circuit courts were due to be dismissed for lack of jurisdiction. That was an improper disposition; the circuit courts in those cases, like the circuit court in this case, were vested with jurisdiction to review by appeal the board's determination on the question of timeliness of the initial administrative appeal. Thus, to the extent that we concluded in those cases, either explicitly or implicitly, that the circuit courts lacked jurisdiction over the appeals before them, we overrule those cases. We note, however, that, because it was undisputed in those cases that the initial administrative appeals were untimely as a matter of law, our judgments directing the circuit courts to dismiss the appeals for lack of jurisdiction -- as opposed to affirmance of the board's determinations of untimeliness -- made no practical difference in the outcome of those cases.

In the present case, the circuit court, in its order denying the department's motion to dismiss, did not determine whether Sultan's appeal to the hearings and appeals division, which was an appeal challenging the initial determination that he was ineligible for

unemployment-compensation benefits, was, in fact, timely. For the reasons discussed above, we conclude that the circuit court has jurisdiction to make such a determination. If the circuit court determines, after a de novo review, see § 24-5-95, Ala. Code 1975, that the appeal of the initial determination was untimely, then, as the department contends, the decision finding that Sultan is ineligible for benefits is final, and the circuit court is due to affirm that determination. If, however, the circuit court determines that Sultan's notice of appeal of the initial determination was timely, as Sultan argues, then the circuit court must remand the cause to the department for it to consider the merits of Sultan's appeal.

Conclusion

For the reasons set forth above, the circuit court has jurisdiction to review the question of the timeliness of Sultan's initial administrative appeal, and the department is not entitled to the relief requested. The department's petition is, therefore, denied.

PETITION DENIED.

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