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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2023-0467

Ex parte Jonathan David Brown

PETITION FOR WRIT OF MANDAMUS

**(In re: J.G., a minor, by and through
his father and next friend, Ronnie Gilbert**

v.

Jonathan David Brown)

(Shelby Circuit Court, CV-22-474)

MOORE, Judge.

Jonathan David Brown petitions this court to issue a writ of mandamus directing the Shelby Circuit Court ("the circuit court") to dismiss the appeal taken by Ronnie Gilbert, as next friend to his minor

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son, J.G., from a judgment entered by the Shelby District Court ("the district court"). We grant the petition, albeit on a ground different than those grounds argued by Brown.

The materials before this court indicate that, on February 15, 2020, Brown, while operating his automobile in a private parking lot, backed into an automobile occupied by Gilbert and J.G. On February 15, 2022, Gilbert commenced a civil action in the district court against Brown to recover damages for the injuries J.G. had allegedly suffered in the accident. Following a trial on October 19, 2022, the district court entered a judgment on October 31, 2022, awarding Gilbert damages in the amount of \$1,196.60. That judgment was a final judgment because it conclusively adjudicated all the claims asserted by Gilbert against Brown, the only defendant. See Harris v. Cook, 944 So. 2d 977, 980 (Ala. Civ. App. 2006).

On November 11, 2022, Gilbert filed a timely postjudgment motion challenging the sufficiency of the damages awarded by the district court in the final judgment and requesting a new trial. See Rule 59(dc), Ala. R. Civ. P. (providing that a party must file a Rule 59, Ala. R. Civ. P.,

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postjudgment motion directed to a judgment entered in the district court within 14 days of the entry of the judgment). On November 15, 2022, at 6:06 p.m., the district court entered an order denying the postjudgment motion. Section 12-12-70(a), Ala. Code 1975, provides, in pertinent part, that "any party may appeal from a final judgment of the district court in a civil case by filing notice of appeal in the district court, within 14 days from the date of the judgment or the denial of a posttrial motion, whichever is later" Pursuant to § 12-12-70(a), the time for Gilbert to take an appeal from the district court's judgment commenced upon the district court's denial of Gilbert's postjudgment motion.

On November 15, 2022, at 10:51 p.m., Gilbert purported to file a second postjudgment motion, restating his original challenge to the sufficiency of the damages awarded, but requesting, as alternative relief, that the district court "add \$5,000.00 to the prior judgment for general damages" The second postjudgment motion was not a proper amendment to the first postjudgment motion, which had already been denied. See Slaton v. Slaton, 542 So. 2d 1242, 1244 (Ala. Civ. App. 1989) (stating that "a trial court has the jurisdiction to allow an amendment to

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a motion to alter, amend, or vacate a judgment after 30 days from the final judgment if the original motion was timely filed and is still before the court when the amendment is filed" (emphasis added)). The second postjudgment motion also was not a proper new and separate postjudgment motion because it was not filed within 14 days of the entry of the district court's final judgment and was not directed toward an amendment of the final judgment. See Rule 59(dc), and Alabama Farm Bureau Mut. Cas. Ins. Co. v. Boswell, 430 So. 2d 426, 428 (Ala. 1983). Thus, the filing of the second postjudgment motion did not invoke the jurisdiction of the district court or toll the commencement of the 14-day appeal period.

The district court entered an order on November 28, 2022, purporting to deny the second postjudgment motion, but that order is a nullity because the district court lost jurisdiction over the case after it denied the first postjudgment motion on November 15, 2022. See Woodget v. State Dep't of Hum. Res. ex rel. Woodget, 184 So. 3d 409, 410 (Ala. Civ. App. 2015) (quoting Ex parte Allstate Life Ins. Co., 741 So. 2d 1066, 1071 (Ala. 1999)) ("[Our supreme court] has repeatedly held that

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after a trial court denies a Rule 59[, Ala. R. Civ. P.,] post-judgment motion, the trial court no longer has jurisdiction over the case'"); J.B. v. A.B., 888 So. 2d 528, 532 (Ala. 2008) ("An order entered by a trial court without jurisdiction is a nullity."). The time to file an appeal to the circuit court expired on November 29, 2022. On December 12, 2022, Gilbert mailed, via certified mail, a notice of appeal to the circuit court, which was received and filed in the circuit court on December 14, 2022. Whether the notice of appeal is deemed to have been filed on December 12 or December 14, 2022, the notice of appeal was untimely and did not invoke the appellate jurisdiction of the circuit court.

In the circuit court, Brown filed a motion to dismiss Gilbert's appeal. Brown mistakenly concluded that the time for appeal commenced on November 28, 2022, when the district court entered the void order denying Gilbert's second postjudgment motion and argued that the notice of appeal had been untimely filed 16 days from the entry of that order. Gilbert countered that he had timely filed the notice of appeal by depositing it in the mail on December 12, 2022, 14 days after the entry of the November 28, 2022, order. The circuit court entered an

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order denying the motion to dismiss on May 26, 2023. On July 6, 2023, Brown filed this petition for a writ of mandamus with this court.

"This Court has consistently held that the writ of mandamus is an extraordinary and drastic writ and that a party seeking such a writ must meet certain criteria. We will issue the writ of mandamus only when (1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked. Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997). Because mandamus is an extraordinary remedy, the standard by which this Court reviews a petition for the writ of mandamus is to determine whether the trial court has clearly abused its discretion. See Ex parte Rudolph, 515 So. 2d 704, 706 (Ala. 1987)."

Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000). A petition for the writ of mandamus is the appropriate vehicle to challenge an order of a circuit court denying a motion to dismiss an appeal from a judgment of a lower district court for lack of jurisdiction. See Ex parte Thrailkill, 543 So. 2d 1201 (Ala. Civ. App. 1989).

In his petition, Brown reasserts the legal argument he made to the circuit court; however, that argument is based in part on the faulty premise that the period to appeal commenced upon the entry of the order purporting to deny Gilbert's second postjudgment motion. As we

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explained above, that November 28, 2022, order is a nullity. The time for appeal commenced on November 15, 2022, not on November 28, 2022, and the time for appeal expired on November 29, 2022, not December 12, 2022. Nevertheless, this court is not bound by the jurisdictional arguments of the petitioner because we are required to notice an absence of jurisdiction in a lower court ex mero motu. See Ex parte M.M.T., 148 So. 3d 728, 732 (Ala. Civ. App. 2014). In this case, the circuit court did not acquire jurisdiction over the case because Gilbert did not file a notice of appeal on or before November 29, 2022. Accordingly, the district court erred in denying Brown's motion to dismiss for that reason. We express no opinion as to whether the circuit court lacked jurisdiction for any other reason.

Based on the foregoing, the petition for a writ of mandamus is granted. We order the circuit court to vacate its May 26, 2023, order and to enter a new order dismissing Gilbert's appeal.

PETITION GRANTED; WRIT ISSUED.

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