Rel: March 29, 2024

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0501

State Farm Mutual Automobile Insurance Company

v.

Tracey Pettway and LuGena Pettway

Appeal from Mobile Circuit Court
(CV-18-903019)

PER CURIAM.

State Farm Mutual Automobile Insurance Company ("State Farm") appeals from an order entered by the Mobile Circuit Court ("the trial court") granting a motion to enforce a settlement filed by Tracey Pettway and LuGena Pettway. We dismiss the appeal.

On November 29, 2018, the Pettways filed a complaint against Shakira Andrea Horne, alleging claims of negligence and loss of consortium arising from a motor-vehicle accident that had occurred in December 2016. Specifically, Tracey Pettway alleged that Horne had negligently caused her vehicle to collide with a vehicle operated by Tracey, causing him to suffer injuries, pain, and mental anguish, for which he had incurred medical expenses. LuGena, Tracey's wife, alleged that, as a proximate cause of Horne's negligence, she had lost the care and society of her husband. On January 2, 2019, Horne filed an answer, and, on March 28, 2019, she filed an amended answer, denying the material allegations in the complaint and asserting various affirmative defenses.

State Farm, the Pettways' underinsured-motorist ("UIM") insurance carrier, subsequently intervened in the action and filed an answer. After State Farm intervened, Progressive Insurance Company, Horne's automobile-liability insurance carrier, offered to settle the case against Horne for $25,000, its policy limits. Horne's counsel notified State Farm's counsel of the settlement offer. Pursuant to the procedure set forth in Lambert v. State Farm Mutual Automobile Insurance Co.,

576 So. 2d 160 (Ala. 1991), State Farm, in order to preserve its subrogation rights against Horne and Progressive, tendered a check to the Pettways in the full amount of Progressive's policy limits. State Farm then opted out of the case. See Lowe v. Nationwide Ins. Co., 521 So. 2d 1309 (Ala. 1988).

On March 2, 2023, the Pettways' counsel informed the trial court that the case had been settled. Upon receiving notice of the settlement, the trial court removed the case from its active docket and placed it on the "dismissal docket." Afterward, State Farm and the Pettways filed competing motions to enforce the settlement, contesting the amount of the settlement proceeds payable by State Farm.[1] On April 28, 2023, the trial court entered an order granting the Pettways' motion to enforce the

[1]We note that only Tracey, and not LuGena, filed a motion to enforce the settlement and that the order granting the motion to enforce the settlement, discussed infra, refers only to Tracey as well. However, we are convinced from a reading of the entire record that, although the motion to enforce the settlement was filed in only Tracey's name, it was also filed on behalf of LuGena and that the order granting the motion was intended for the benefit of LuGena as well. See generally Griffin v. Proctor, 244 Ala. 537, 14 So. 2d 116 (1943) (holding that any uncertainty as to identity of parties for whom judgment has been entered may be resolved by reference to entire proceedings); Adams v. Bibby, 194 Ala. 652, 69 So. 588 (1915) (same); Bolling v. Spiller, 96 Ala. 269, 11 So. 300 (1892) (same).

settlement. On May 25, 2023, State Farm filed a motion to alter, amend, or vacate that order. On June 6, 2023, the trial court entered an order denying that motion and requiring State Farm to pay $35,140 to "the Plaintiff." On July 8, 2023, State Farm filed a notice of appeal to this court.[2]

Before considering the merits of an appeal, this court must first ascertain whether it has appellate jurisdiction, even if the parties do not raise that issue. See Horton v. Horton, 822 So. 2d 431, 433 (Ala. Civ. App. 2001). "[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987).

[2]The notice of appeal did not name LuGena Pettway as an appellee. See note 1, supra. The notice did identify Horne as an appellee, but State Farm has not made any argument that the order appealed from was entered in favor of Horne. Rule 3(c), Ala. R. App. P., requires that an appellant designate "each adverse party against whom an appeal is taken" and to "designate the ... order ... appealed from." But that rule also provides that "[s]uch designation ... shall not ... limit the scope of appellate review." The appellees' brief was filed on behalf of Tracey and LuGena, and State Farm has not disputed that LuGena should be considered an appellee. Accordingly, we do not treat Horne as an appellee, we treat LuGena as an appellee, and we have amended the style of the appeal. See Progressive Direct Ins. Co. v. Keen, 376 So. 3d 482, 484 n.2 (Ala. 2022).

This court has no appellate jurisdiction over an untimely appeal. See Gunnison-Mack v. Alabama State Pers. Bd., 923 So. 2d 319, 321 (Ala. Civ. App. 2005). The Pettways moved to dismiss this appeal, asserting that State Farm has failed to file its appeal in accordance with Rule 4(a)(1)(A), Ala. R. App. P., which provides that an appeal from "any interlocutory order granting ... an injunction" "shall be filed within 14 days ... of the date of the entry of the order ... appealed from ...." The Pettways maintain that State Farm appealed from the order granting their motion to enforce the settlement, which, they say, is an interlocutory order granting an injunction. State Farm maintains that the order granting the motion to enforce the settlement is not injunctive in nature and that, even if it was, the order was a final judgment, and, thus, it says, it had 42 days to appeal following the denial of its motion to alter, amend, or vacate the order. See Rule 4(a)(3), Ala. R. App. P.

We agree with the Pettways that the order granting their motion to enforce the settlement is an order granting an injunction. In Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683, 690 (Ala. 2009), the Mobile Circuit Court entered an order on March 6, 2009, granting a motion to enforce a pro tanto settlement. In the order, the circuit court

directed the plaintiff to execute a release and commanded the defendant to tender the settlement proceeds. The order further provided: "'Upon the consummation of the settlement ... this matter will be deemed dismissed with prejudice, each party to bear its own cost.'" 40 So. 3d at 689. The supreme court held that the March 6, 2009, order was "injunctive in nature" because it commanded the defendant to take specific action -- to pay the settlement proceeds to the plaintiff -- and compelled compliance before the case would be dismissed. 40 So. 3d at 690. The supreme court followed the holding in Kappa Sigma Fraternity in Lem Harris Rainwater Family Trust v. Rainwater, 344 So. 3d 331 (Ala. 2021), and in McCullough v. Windyke Country Club, Inc., [Ms. SC-2023-0408, Aug. 11, 2023] ___ So. 3d ____ (Ala. 2023).

In this case, the trial court set the case on its "dismissal docket," pending execution of the settlement between the parties. The Pettways and State Farm filed separate motions to enforce the terms of the settlement. On April 28, 2023, the trial court entered the order granting the Pettways' motion, without comment. In granting the Pettways' motion, the trial court impliedly ordered State Farm to tender the settlement proceeds in the amount advocated by the Pettways so that the

parties could consummate the settlement. According to Kappa-Sigma Fraternity and its progeny, that order was injunctive in nature. We are bound to follow those decisions on this point, and we cannot overrule them, as State Farm requests. See Ala. Code 1975, § 12-3-16.

We also agree that the order granting the Pettways' motion to enforce the settlement was interlocutory in nature. An interlocutory order is one that does not adjudicate all the claims of all the parties and that is not certified as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. See Plantation S. Condo. Ass'n v. Profile Mgmt. Corp., 783 So. 2d 838, 840 (Ala. Civ. App. 2000). The order effectively resolved the Pettways' claim against State Farm. It remains, however, that the order did not address the Pettways' claims against Horne, which remained pending even after the trial court ordered State Farm to settle the case. In their motions to enforce the settlement, State Farm and the Pettways referred to settlement negotiations involving the attorney representing Horne and to Progressive's agreement to pay its policy limits of $25,000, but neither motion requested that the trial court order Horne or Progressive, her insurer, to do anything. The trial court also did not expressly or impliedly order Horne or Progressive to perform any act to

consummate a settlement with the Pettways or State Farm. The trial court took no action to adjudicate the Pettways' claims against Horne; those claims remained on the "dismissal docket" awaiting further action by the trial court. Contrary to State Farm's contention, the order granting the motion to enforce the settlement was not a final judgment.

Because the April 28, 2023, order was not a final judgment, State Farm's motion to alter, amend, or vacate that order was not a postjudgment motion pursuant to Rule 59, Ala. R. Civ. P.; instead, it was only a motion to reconsider the interlocutory order granting an injunction. See State v. Brantley Land, L.L.C., 976 So. 2d 996, 998 n.3 (Ala. 2007); Lambert v. Lambert, 22 So. 3d 480, 483-84 (Ala. Civ. App. 2008). A motion to reconsider does not toll the time for taking an appeal from an interlocutory order. See Momar, Inc. v. Schneider, 823 So. 2d 701, 706 (Ala. Civ. App. 2001). Thus, State Farm only had until May 12, 2023, to file its notice of appeal. State Farm did not file its notice of appeal until July 28, 2023.

"An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court." Rule 2(a)(1), Ala. R. App. P. We conclude that this appeal was not timely filed, and,

therefore, we dismiss the appeal. However, nothing in our opinion shall be construed as precluding State Farm from appealing and challenging the interlocutory injunction order following entry of a final judgment in this case. See Lem Harris Rainwater Fam. Tr. v. Rainwater, 373 So. 3d 1089 (Ala. 2022).

APPEAL DISMISSED.

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

Edwards, J., concurs in the result, without opinion.