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# **SUPREME COURT OF ALABAMA**

**SPECIAL TERM, 2023**

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**SC-2023-0261**

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**Dorothy Richey**

**v.**

**Paul Morris, as guardian and conservator of the Estate of  
Rodney Morris, an incapacitated person**

**Appeal from Clarke Circuit Court  
(CV-17-900069)**

STEWART, Justice.

Dorothy Richey appeals from a judgment of the Clarke Circuit Court ("the trial court") that set aside a deed conveying an interest in certain property ("the property") to Richey on the basis that the grantor, Rodney Morris, was incompetent at the time he purportedly executed the deed. Because the appeal is not from a final judgment, however, it must be dismissed.

On April 25, 2017, Paul Morris, as guardian and conservator of the estate of his brother Rodney Morris ("Rodney"), an incapacitated person, initiated this action against Richey, seeking to set aside a deed in which Rodney had purported to convey his interest in the property to Richey. Morris alleged that Rodney had lacked the mental capacity to execute the deed in question and sought a judgment declaring the deed void and setting it aside. Morris also sought an accounting of any proceeds Richey had obtained from harvesting timber located on the property. On May 30, 2017, Richey filed an answer and a counterclaim, which included claims of fraud, negligent misrepresentation, conversion, civil conspiracy, and breach of contract against Morris.

The case was called for trial on April 21, 2022. During the pretrial discussion, the trial judge stated as follows:

"What we are here on today, as I appreciate it ... first and foremost, we've got to determine whether or not to set aside that deed.

"....

"Before anything else can be done, we've got to make a decision about whether that deed should be set aside."

A bench trial was then conducted in which the testimony and evidence primarily related to Rodney's capacity to execute the deed. No evidence was offered, and no arguments were made, concerning any of Richey's counterclaims.

On December 8, 2022, the trial court entered an order finding that Rodney was incompetent at the time the deed was executed and setting aside the deed. The trial court also ordered Richey to provide a full accounting for any proceeds she had received from the harvesting of timber from the property. The order made no mention of Richey's counterclaims. Richey subsequently initiated this appeal.

Although the issue has not been raised by the parties, we must first address whether the trial court's order constitutes a final judgment supporting the appeal in this case. "This Court addresses *ex mero motu* the lack of appellate jurisdiction when an appeal is taken from a nonfinal judgment." Ex parte Eustace, 291 So. 3d 33, 36 (Ala. 2019). A final

judgment is one "that conclusively determines the issues before the court and ascertains and declares the rights of the parties involved." Bean v. Craig, 557 So. 2d 1249, 1253 (Ala. 1990).

Here, the trial court's December 8, 2022, order made no reference to Richey's counterclaims. Furthermore, the record indicates that the trial court did not intend to consider the merits of Richey's counterclaims during the April 21, 2022, trial. Accordingly, the counterclaims were not resolved by the December 8, 2022 order, and this appeal must be dismissed as arising from a nonfinal judgment.<sup>1</sup> See Posey v. Posey, 614 So. 2d 1041, 1042 (Ala. 1993) (dismissing appeal as arising from nonfinal judgment when trial court's order did not mention certain claim and it did not appear that that claim had been considered on the merits); and Malone v. Gainey, 726 So. 2d 725, 726 (Ala. Civ. App. 1999) (dismissing appeal as arising from nonfinal judgment when trial court's order did not address counterclaim and the merits of the counterclaim had not been argued at bench trial); see also Alfa Life Ins. Corp. v. Jackson, 906 So. 2d 143, 153 (Ala. 2005) (distinguishing the rule in jury cases, in which,

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<sup>1</sup>The order also was not certified as final pursuant to Rule 54(b), Ala. R. Civ. P.

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absent a formal severance of an unadjudicated claim, a judgment failing to address the claim will generally be deemed a judgment on the merits adverse to the claimant).

APPEAL DISMISSED.

Parker, C.J., and Wise, Sellers, and Cook, JJ., concur.