Rel: April 30, 2021

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200374

Ex parte Alabama Medicaid Agency

PETITION FOR WRIT OF MANDAMUS

(In re: J.C.T.

v.

Alabama Medicaid Agency)

(Montgomery Circuit Court, CV-20-901095)

THOMPSON, Presiding Judge.

The Alabama Medicaid Agency ("the Agency") petitions this court for a writ of mandamus directing the Montgomery Circuit Court ("the circuit court") to dismiss J.C.T.'s petition for judicial review of the Agency's denial of J.C.T.'s application for services provided through the "Home-and Community-Based Waiver for Persons with Intellectual Disabilities" program ("the ID waiver program"). We deny the petition.

Facts and Procedural History

When J.C.T. was three years old, he was diagnosed with autism, and it appears from the materials before this court that he has had developmental issues throughout his life. In 2018, J.C.T., who was then 22 years old, applied for enrollment in the ID waiver program, which is administered for the Agency by the Alabama Department of Mental Health ("the Department"). See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-35-.01(3)("The ID Waiver [program] is administered with a cooperative effort between the [Agency] and the [Department]. The [home- and community-based services provided] under the ID Waiver [program] are limited to individuals with a diagnosis of an intellectual disability, age 3 and above."). The ID waiver program provides "health,

social, and related support needed to ensure optimal functioning of individuals with intellectual disabilities within a community setting." Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-35-.02. See also Ala. Admin. Code (Dep't of Mental Health), former r. 580-5-30-.13.[1] Dr. Eliza Belle, a licensed psychologist and the Department's director of psychological and behavioral services, testified at a fair hearing on J.C.T.'s application for enrollment in the ID waiver program, which is discussed in more detail later in this opinion, that an individual is eligible to participate in the ID waiver program if he or she has a current diagnosis of an intellectual disability, had been diagnosed with that intellectual disability before the age of 18, has significant problems in 2 of 6 areas of life activities on the "the Inventory for Client and Agency Planning," has obtained a full-scale IQ score of less than 70 that is not the result of mental illness, has 2 significant problems in adaptive functioning, and has never obtained a full-scale IQ score of 70 or above.

[1]Former r. 580-5-30-.13 has been amended and renumbered as Ala. Admin. Code (Dep't of Mental Health), r. 580-5-30-.14, effective January 14, 2021.

On September 10, 2018, after reviewing the documentation submitted with J.C.T.'s application, the Department concluded that J.C.T. did not qualify to participate in the ID waiver program because J.C.T., when he was 11 years old, had obtained an IQ score of 76 on the "Universal Nonverbal Intelligence Test" (the "UNIT"). J.C.T. timely appealed that denial to the Department's associate commissioner.

On March 19, 2019, after considering the submitted documentation, the Department's associate commissioner issued a decision, agreeing with the Department's initial determination that J.C.T. did not meet the eligibility criteria for participation in the ID waiver program. In explaining the determination, the associate commissioner noted that one of the requirements for participation in the ID waiver program is that the individual have "no instances of IQ scores above a score of 69" and that the documents submitted by J.C.T. indicated that, in 2008, he had obtained an IQ score of 76. Additionally, the associate commissioner explained that autism is not considered an intellectual disability and, therefore, that J.C.T. did not satisfy the requirement for participation in

the ID waiver program that the individual be diagnosed with an intellectual disability before he or she reaches the age of 18.

On April 10, 2019, J.C.T., through his "Medicaid authorized representative,"[2] sought a fair hearing from the Agency before an administrative-law judge regarding the Department's denial of J.C.T.'s application for enrollment in the ID waiver program. See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-35-.17.

On May 19, 2020, an administrative-law judge conducted a fair hearing. In its opening statement, the Agency argued that the refusal to enroll J.C.T. in the ID waiver program was proper because, it said, J.C.T. did not satisfy at least two of the criteria necessary to participate in the ID waiver program. Specifically, it maintained that J.C.T. had not been diagnosed with an intellectual disability before the age of 18, that he had obtained an IQ score above 70 that negated consideration of any subsequent IQ scores below 70, and that, because he had not been

[2]A "Medicaid authorized representative" is a person who has been given authorization to act on behalf of a Medicaid applicant or beneficiary in matters before the Agency. See 42 C.F.R. § 435.923.

diagnosed with an intellectual disability before the age of 18, he could not demonstrate how a purported intellectual-disability diagnosis made after he had reached 18 years of age related back to an intellectual-disability diagnosis made before he had reached the age of 18.

J.C.T., in his opening statement made by his counsel, who was also J.C.T.'s Medicaid authorized representative, disagreed with the Department's decision because, he said, his 2008 IQ score of 76 was not a valid IQ score and other valid evidence indicated that he was intellectually disabled. He further argued that the Department's requirements for participation in the ID waiver program and its procedures in making its eligibility determinations were overly narrow and outdated.

At the hearing, Dr. Belle testified that she assists the Department's associate commissioner, who is responsible for reviewing appeals from decisions denying participation in the ID waiver program. Dr. Belle testified that she had reviewed the documentation submitted by J.C.T. and that J.C.T. did not satisfy the requirements for enrollment in the ID waiver program. She explained that J.C.T.'s diagnosis of autism when

he was 3 years old did not satisfy the requirement that the applicant have been diagnosed with an intellectual disability before the age of 18. Dr. Belle testified that the Department considered J.C.T.'s IQ score of 76 on the UNIT, obtained when J.C.T. was 11, to be a valid IQ score that also precluded his participation in the ID waiver program. She stated that documents relating to J.C.T.'s "Individualized Education Programs" ("IEPs")[3] were also considered in reaching the decision to deny J.C.T.'s application and that none of the submitted documents relating to the IEPs that were used in making the Department's initial determination indicated that J.C.T. had an intellectual disability; rather, she said, they indicated that he was autistic, which, she asserted, is a developmental disability. According to Dr. Belle, after considering all the documents submitted in support of J.C.T.'s application, the associate commissioner had upheld the denial of J.C.T.'s application for enrollment in the ID

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[3]It appears that J.C.T. submitted documents relating to three IEPs with his application for enrollment in the ID waiver program. After J.C.T.'s application was denied, he submitted documents relating to numerous additional IEPs. The administrative-law judge, in reaching his decision, did not consider the documents relating to those additional IEPS that were submitted after the initial determination had been made.

waiver program because J.C.T. had obtained an IQ score of 76 and because J.C.T. suffers from a developmental disorder rather than an intellectual disorder.[4]

J.C.T.'s father testified that, when J.C.T. was three years old, J.C.T. had been diagnosed with autism and that, throughout his education, J.C.T. had received special-education services. He explained that J.C.T. is a danger to himself and cannot be left unattended because he cannot speak, has no level of self-responsibility, and is impervious to pain. J.C.T.'s mother's testimony echoed his father's testimony and emphasized that J.C.T. is dependent upon others to assist him with his basic needs.

Dr. Joseph Ackerson, a pediatric neuropsychologist, testified that the current definition of intellectual disability does not use only an IQ score as the determinant; rather, he stated, the current definition of intellectual disability considers both an individual's IQ score and the individual's

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[4]Dr. Belle did acknowledge that, after the Department had denied J.C.T.'s application, Dr. Bonnie Adkinson administered the Wechsler Adult Intelligence Scale to J.C.T., who was 21 years old at the time, and that J.C.T. had obtained a full-scale IQ score of 62 on that assessment, which, she said, indicated that J.C.T. might have a mild intellectual disability.

adaptive functioning. He explained that a more accurate means of assessing a person's intellectual ability is to consider the results from testing over a period. He further testified that he did not believe that J.C.T.'s IQ score of 76 on the UNIT reflected an accurate representation of J.C.T.'s intellectual ability. He explained that the UNIT is a school evaluation tool, not a diagnostic or clinical evaluation tool; he specifically stated that the UNIT is a narrowly based assessment that fails to consider numerous factors that are used to determine an individual's intellectual ability. According to Dr. Ackerson, J.C.T.'s IQ scores below 70 obtained in 2017 and 2018 on the Wechsler Adult Intelligence Scale, a diagnostic tool used to evaluate intellectual ability, more accurately reflected J.C.T.'s true intellectual ability. When asked by J.C.T.'s counsel and Medicaid authorized representative what conclusions with regard to J.C.T.'s intellectual ability he had reached after evaluating the records considered by Dr. Belle, Dr. Ackerson testified that J.C.T. has an intellectual disability. Specifically, he observed that J.C.T.'s motor impairment reflected in the documents evaluated by the Department is not consistent with autism but is consistent with an intellectual disability.

On June 11, 2020, the administrative-law judge issued a decision, recommending, based on the preponderance of the evidence, that the Department be deemed to have acted properly in denying J.C.T.'s application for the ID waiver program. On July 10, 2020, the Agency's commissioner issued a final decision upholding the administrative-law judge's recommendation. On August 5, 2020, J.C.T.'s counsel and Medicaid authorized representative sent a letter to the Agency, which served as J.C.T.'s notice of appeal, informing the Agency that J.C.T. was seeking judicial review on the commissioner's final decision in circuit court.

On September 3, 2020, J.C.T. filed in the circuit court a "petition for review" of the Commissioner's denial of his enrollment in the ID waiver program. J.C.T. maintained that the final decision was arbitrary and capricious because, he said, the preponderance of the evidence at the fair hearing established that he has an intellectual disability and, thus, that he is eligible to participate in the ID waiver program. Additionally, he contended that his due-process rights were violated at the fair hearing.

On September 25, 2020, the Agency was served with the petition for judicial review. On October 26, 2020, the Agency, pursuant to Rule 12(f), Ala. R. Civ. P., filed a "motion to strike immaterial matters from the petition for review." Specifically, the Agency asked the circuit court to strike various statements in J.C.T.'s petition that, it said, asserted facts that are not supported by the record of and the evidence admitted at the fair hearing. Additionally, the Agency moved to strike certain arguments that, it said, J.C.T. had not presented at the fair hearing.

Also, on October 27, 2020, the Agency, pursuant to Rules 12(b)(1) and 17, Ala. R. Civ. P., and § 41-22-20, Ala. Code 1975, filed a "motion to dismiss for lack of subject matter jurisdiction because the statutory notice of appeal was not filed by someone with legal capacity." In its motion, the Agency argued that, because the record of the fair hearing indicated that J.C.T. is unable to make or communicate responsible decisions, J.C.T., the named party in interest, is incompetent due to "some other cause" and does not have the capacity to sue. The Agency further argued that if J.C.T. did have the capacity to sue, then he could not prevail on the merits of his petition for judicial review because, it asserted, a finding of

competence to sue would mean that he is not intellectually disabled, a required finding to participate in the ID waiver program. See Ala. Admin. Code (Dep't of Mental Health), former r. 580-5-30-.13(2)(b)(2.)(providing that a person must be intellectually disabled to qualify for the ID waiver program). The Agency reasoned that, "because [J.C.T.] does not have the capacity to file a lawsuit under both [the Agency's] argument and the argument in the petition, the notice of appeal is a nullity," and, consequently, it asserted, the circuit court lacked jurisdiction over the petition for review and the petition should be dismissed.

On November 20, 2020, J.C.T. filed his "memorandum in opposition to [the Agency's] motion to strike and motion to dismiss." In his memorandum, J.C.T. admitted that, because he did not have a copy of the record and a transcript of the fair hearing until after he had filed his petition for judicial review, he had mistakenly referenced in his petition comments not made on the record. J.C.T. then argued that the court was "more than capable of making its own decision based on the available facts, evidence, and controlling law." See Ex parte Atchley, 936 So. 2d 513, 516 (Ala. 2006)("We presume that trial court judges know and follow

the law."); Ex parte Slaton, 680 So. 2d 909, 924 (Ala.1996)("Trial judges are presumed ... to know the law and to follow it in making their decisions."); and Carter v. State, 627 So. 2d 1027, 1028 (Ala. Crim. App. 1992)("A trial judge's actions are presumptively correct in the absence of a showing to the contrary.").

On November 25, 2020, the Agency filed a "consolidated motion to dismiss for lack of subject-matter jurisdiction," pursuant to Rules 12(b)(1) and 17 and § 41-22-20. In that motion, the Agency maintained that the petition for judicial review was due to be dismissed because the notice of appeal and the petition had not been filed by someone with the capacity to file a petition for judicial review within the statutory time limits set forth in § 41-22-20(d).

On December 1, 2020, the circuit court conducted a hearing to address the Agency's motions.[5] On February 10, 2021, the circuit court, after considering the arguments made at the hearing and the filings of the parties, denied the Agency's motions to dismiss and motion to strike. That

[5]A transcript of the hearing is not included in the materials before this court.

same day, the circuit court entered an order appointing a guardian ad litem to represent J.C.T. That order provides:

> "1. This matter came before the court for a hearing on December 1, 2020, following [the Agency's] first motion to dismiss, filed on October 27, 2020, and [the Agency's] second motion to dismiss, filed November 25, 2020.
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> "2. At the hearing on December 1, 2020, [J.C.T.] pointed to substantial Alabama caselaw holding that, where the capacity of a litigant to sue or be sued is at issue, the appropriate remedy is <u>not</u> dismissal of the matter, but instead appointment of a guardian ad litem.
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> "3. [J.C.T.] further pointed out at the December 1 hearing that there has never been a legal adjudication of his competency or capacity.
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> "4. [The Agency], in turn, argued that this matter is due to be dismissed because a person alleged to be without capacity to sue filed the notice of appeal with the [Agency] on August 5, 2020, and the petition for review in this court on September 3, 2020, and that appointment of a guardian ad litem would not cure the defects in filing.
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> "5. Alabama Rule of Civil Procedure 17(c) gives this court the power to 'appoint a guardian ad litem ... (2) for an incompetent person not otherwise represented in an action and [to] make any other orders it deems proper for the protection of the ... incompetent person.'
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> "6. The same rule has been interpreted to <u>require</u> the appointment of a guardian ad litem where it is alleged that

> one of the litigants is incompetent. Helton v. Helton, 362 So. 2d 257, 259 (Ala. Civ. App. 1978).
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> "IT IS THEREFORE ORDERED, ADJUDGED, and DECREED by this court that, for the foregoing reasons, a guardian ad litem will be appointed on behalf of the petitioner in this matter."

(Capitalization in original.)

On February 19, 2021, the Agency filed a petition for a writ of mandamus in this court asking this court to direct the circuit court to dismiss the underlying action. On February 22, 2021, this court ordered answers, and on March 8, 2021, J.C.T. filed his answer.

Standard of Review

> "A petition for a writ of mandamus is the appropriate means to review the denial of an administrative agency's motion to dismiss a complaint in a circuit court for lack of subject-matter jurisdiction. See Ex parte Builders & Contractors Ass'n of Mississippi Self-Insurer's Fund, 980 So. 2d 1003, 1006 (Ala. Civ. App. 2007) (mandamus review of denial of motion to dismiss for lack of subject-matter jurisdiction). We apply the following standard of review to the agency's petition:
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> > " ' "Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent 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 Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003) (quoting Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995))."

Ex parte Alabama Medicaid Agency, 298 So. 3d 522, 523-24 (Ala. Civ. App. 2020).

Analysis

The Agency contends that it has a clear, legal right to the dismissal of the underlying action because, it says, the circuit court lacks subject-matter jurisdiction to entertain the underlying action.

Rule 12(h)(3), Ala. R. Civ. P., provides: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

> "Subject-matter jurisdiction is a simple concept:
>
> " 'Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. The principle of subject matter jurisdiction relates to a court's inherent authority to deal with the case or matter before it. The term means not simply jurisdiction of the particular case then occupying

> > the attention of the court but jurisdiction of the class of cases to which the particular case belongs.'
>
> "21 C.J.S. Courts § 11 (2006). In determining a trial court's subject-matter jurisdiction, this Court asks ' "only whether the trial court had the constitutional and statutory authority" to hear the case.' Russell v. State, 51 So. 3d 1026, 1028 (Ala. 2010) (quoting Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006)). Problems with subject-matter jurisdiction arise if, for example, a party files a probate action in a juvenile court, a divorce action in a probate court, or a bankruptcy petition in a circuit court, because the nature or class of those actions is limited to a particular forum with the authority to handle them. There are, however, no problems with subject-matter jurisdiction merely because a party files an action that ostensibly lacks a probability of merit."

Ex parte Safeway Ins. Co. of Alabama, 148 So. 3d 39, 42-43 (Ala. 2013).

> "A ruling on a motion to dismiss [for lack of subject-matter jurisdiction] is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002). Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader will ultimately prevail but whether the pleader may possibly prevail."

Newman v. Savas, 878 So. 2d 1147, 1148-49 (Ala. 2003).

First, the Agency contends that the subject-matter jurisdiction of the circuit court was not invoked to entertain the petition for judicial review

because the notice of appeal was filed by a person who, it says, lacks sufficient understanding or capacity to make or communicate responsible decisions. Section 41-22-20(a), provides, in pertinent part, that "[a] person ... who is aggrieved by a final decision in a contested case is entitled to judicial review." To institute judicial review of an administrative decision, the aggrieved person must file a "notice of appeal or review" with the administrative agency within 30 days of his or her receipt of the notice of the agency's final decision. § 41-22-20(b) and (d). The filing of a notice of appeal with the administrative agency is a "preliminary step to invoking the jurisdiction of a circuit court to conduct a judicial review of [the administrative agency's] decision." L.C. v. Shelby Cnty. Dep't of Hum. Res., 293 So. 3d 912, 914 (Ala. Civ. App. 2019). The timely filing of a notice of appeal with an agency is a jurisdictional act. See Noland Health Servs., Inc. v. State Health Planning & Dev. Agency, 44 So. 3d 1074, 1080 (Ala. 2010)(quoting Krawczyk v. State Dep't of Pub. Safety, 7 So. 3d 1035, 1037 (Ala. Civ. App. 2008)). "Questions as to capacity[, however,] are not jurisdictional in nature." Moultrie v. Wall, 143 So.3d 128, 135 n.9 (Ala.

2013); see also Ex parte Tyson Foods, Inc., 146 So. 3d 1041, 1043-1047 (Ala. 2013) (discussing "standing to sue" versus "capacity to sue").

Here, J.C.T. is the person aggrieved by the final decision of the Agency. The notice of appeal for judicial review of the Agency's final decision filed with the Agency and the petition for judicial review filed in the circuit court were filed by J.C.T. Those filings invoked the circuit court's subject-matter jurisdiction to consider the propriety of the Agency's decision. When the Agency in its motions to dismiss informed the circuit court that evidence at the fair hearing indicated that J.C.T. was unable to make or communicate responsible decisions and that the petition for judicial review contained allegations that J.C.T. lacks understanding or capacity to make or communicate responsible decisions, the Agency brought to the court's attention its concerns that J.C.T. might not be competent and might lack the capacity to sue. The Agency's assertion that J.C.T. lacks the capacity to sue, however, did not deprive the circuit court of subject-matter jurisdiction over J.C.T.'s petition for judicial review. See Moultrie, supra. Consequently, the circuit court did not err in denying the Agency's motions to dismiss for this reason, and the Agency

has not demonstrated a clear, legal right to dismissal of J.C.T.'s petition for judicial review in this regard.

The Agency also maintains that, because J.C.T.'s notice of appeal was executed and mailed by his counsel and Medicaid authorized representative and not by J.C.T. himself, the circuit court's jurisdiction was not invoked. The Agency urges that the plain language of § 41-22-20, the statute providing for judicial review of administrative decisions in contested cases and providing the procedures for such actions in circuit court, requires that the aggrieved party, him or herself, mail the notice of appeal to an agency to invoke the circuit court's subject-matter jurisdiction.

In Ex parte State Department of Revenue, 683 So. 2d 980, 983 (Ala. 1996), our supreme court reminded that, when interpreting a statute, the "[w]ords [in the statute] must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret that language to mean exactly what it says." Moreover, "[a] statute must be considered in its entirety, and every word in it should be made effectual where possible." Commercial Standard Ins. Co. v.

Alabama Surface Min. Reclamation Comm'n, 443 So. 2d 1245, 1248 (Ala. Civ. App. 1983).

Section 41-22-20 provides, in pertinent part:

> "(a) A person who has exhausted all administrative remedies available within the agency, other than rehearing, and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter [i.e., the Alabama Administrative Procedure Act, § 41-22-1 et seq., Ala. Code 1975]. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.
>
> "(b) All proceedings for review may be instituted by filing of notice of appeal or review and a cost bond with the agency to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the agency or the court on a showing of substantial hardship. A petition shall be filed either in the Circuit Court of Montgomery County or in the circuit court of the county in which the agency maintains its headquarters, or unless otherwise specifically provided by statute, in the circuit court of the county where a party other than an intervenor, resides or if a party, other than an intervenor, is a corporation, domestic or foreign, having a registered office or business office in this state, then in the county of the registered office or principal place of business within this state.
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> "(c) The filing of the notice of appeal or the petition does not itself stay enforcement of the agency decision. ...
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> "(d) The notice of appeal or review shall be filed within 30 days after the receipt of the notice of or other service of the

final decision of the agency upon the petitioner or, if a rehearing is requested under Section 41-22-17, [Ala. Code 1975,] within 30 days after the receipt of the notice of or other service of the decision of the agency thereon. The petition for judicial review in the circuit court shall be filed within 30 days after the filing of the notice of appeal or review. Copies of the petition shall be served upon the agency and all parties of record. ... Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter, except that for good cause shown, the judge of the reviewing court may extend the time for filing, not to exceed an additional 30 days, or, within four months after the issuance of the agency order, issue an order permitting a review of the agency decision under this chapter notwithstanding such waiver. Any notice required herein which is mailed by the petitioner, certified mail return receipt requested, shall be deemed to have been filed as of the date it is postmarked. This section shall apply to judicial review from the final order or action of all agencies, and amends the judicial review statutes relating to all agencies to provide a period of 30 days within which to appeal or to institute judicial review.

"(e) If there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt fact-finding proceeding under this chapter after having a reasonable opportunity to reconsider its determination on the record of the proceedings.

"(f) Unreasonable delay on the part of an agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency.

"(g) Within 30 days after receipt of the notice of appeal or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record and transcript of the proceedings under review. ...

"(h) The petition for review shall name the agency as respondent and shall contain a concise statement of:

"(1) The nature of the agency action which is the subject of the petition;

"(2) The particular agency action appealed from;

"(3) The facts and law on which jurisdiction and venue are based;

"(4) The grounds on which relief is sought; and

"(5) The relief sought.

"(i) In proceedings for judicial review of agency action in a contested case, except where appeal or judicial review is by a trial de novo, a reviewing court shall not itself hear or accept any further evidence with respect to those issues of fact whose determination was entrusted by law to the agency in that contested case proceeding; provided, however, that evidence may be introduced in the reviewing court as to fraud or misconduct of some person engaged in the administration of the agency or procedural irregularities before the agency not shown in the record and the affecting order, ruling, or award from which review is sought, and proof thereon may be taken in the reviewing court. If, before the date set for hearing a

> petition for judicial review of agency action in a contested case, it is shown to the satisfaction of the court that additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may remand to the agency and order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modification, new findings, or decision with the reviewing court and mail copies of the new findings, or decision to all parties.
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> "(j) The review shall be conducted by the court without a jury and, except as herein provided, shall in the review of contested cases be confined to the record and the additions thereto as may be made under subsection (i) of this section. ...
>
> "(k) Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. ...
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> "(l) Unless the court affirms the decision of the agency, the court shall set out in writing, which writing shall become a part of the record, the reasons for its decision."

According to the Agency, the following emphasized portion of § 41-22-20(d), requires that the petitioner, not his or her representative, must file the notice of appeal: "Any notice required herein which is mailed by the petitioner, certified mail return receipt requested, shall be deemed to

have been filed as of the date it is postmarked." Although it is true that a circuit court's jurisdiction over a petition for judicial review is statutory and that, to invoke the circuit court's subject-matter jurisdiction, a party must strictly comply with § 41-22-20, see Noland Health Servs., 44 So. 3d at 1080-81, a fair reading of that statute, in its entirety, does not provide that the circuit court's subject-matter jurisdiction is invoked only when the notice of appeal is mailed by the petitioner. Rather, a fair reading of § 41-22-20, in its entirety, requires a petitioner to file a timely notice of appeal with the relevant agency that adequately identifies the aggrieved party, identifies the decision about which review is being sought, and provides the agency with sufficient information to put it on notice that the aggrieved party is seeking judicial review of its decision and that it should prepare the transcript of the proceeding under review. Thus, the Agency has not demonstrated a clear, legal right to a dismissal based on the fact that J.C.T.'s counsel and Medicaid authorized representative filed the

notice of appeal with the Agency.[6] Consequently, the circuit court did not have an imperative duty to dismiss J.C.T.'s petition for this reason.

The Agency further contends that it has a clear, legal right to the dismissal of J.C.T.'s petition for judicial review because, it says, the circuit court's subject-matter jurisdiction was not invoked since J.C.T.'s petition for judicial review was not filed in the circuit court by a person competent to sue within 30 days after the filing of the notice of appeal.

In Ex parte Alabama State Personnel Board, 86 So. 3d 993, 995-96 (Ala. Civ. App. 2011), this Court explained:

> "Anyone aggrieved by a final decision of an administrative agency in a contested case is entitled to judicial review as provided in Ala. Code 1975, § 41-22-20. 'Appeals from [administrative-agency] decisions are purely statutory and the time periods provided by the statute must be strictly observed.... In other words, the jurisdiction of the trial court

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[6]In support of this argument, the Agency cites Northstar Anesthesia of Alabama, LLC v. Noble, 215 So. 3d 1044 (Ala. 2016). In Noble, a wrongful-death action was filed by a person who had not been appointed to be the personal representative of the decedent's estate. Section § 6-5-410(a), Ala. Code 1975, provides that "[a] personal representative may commence [a wrongful-death] action ...."). Our supreme court held that the filing of the complaint was a nullity because it had not been filed by the decedent's personal representative. Here, the notice of appeal was filed by J.C.T., the aggrieved party, as required by § 41-22-20.

> is determined by compliance with these statutory time periods.' State Medicaid Agency v. Anthony, 528 So. 2d 326, 327 (Ala. Civ. App. 1988). Accord Ex parte Worley, 46 So. 3d 916, 924 (Ala. 2009) (plurality opinion); and Eitzen v. Medical Licensure Comm'n of Alabama, 709 So. 2d 1239, 1240 (Ala. Civ. App. 1998).
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> "....
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> "Section 41-22-20(b), Ala. Code 1975, mandates that all proceedings seeking judicial review of a final administrative-agency decision in a contested case are instituted by filing 'with the agency' a 'notice of appeal or review,' along with a cost bond. Section 41-22-20(d) requires that the 'notice of appeal or review' be filed within 30 days of receiving notice of an agency's final action and requires that a 'petition for judicial review' be filed in the circuit court within 30 days of the filing of the notice of appeal or review. Section 41-22-20(h), Ala. Code 1975, requires, among other things, that the petition for judicial review 'name the agency as respondent.' Section 41-22-20(d) also authorizes the trial court, for good cause, to extend the filing times stated in the statute up to 'an additional 30 days,' or to 'issue an order permitting a review of the agency decision' 'within four months after the issuance of the agency order.' "

According to the Agency, the evidence at the fair hearing demonstrated that J.C.T. lacks sufficient capacity or understanding to make or communicate reasonable decisions, and, therefore, it reasons, J.C.T. does not have sufficient capacity to file a petition for judicial review. Consequently, the Agency urges that, because J.C.T.'s petition for judicial

review was not filed by a party with legal capacity within the statutorily prescribed filing period, the petition is a nullity and did not invoke the circuit court's subject-matter jurisdiction. However, because we have concluded that the circuit court does have subject-matter jurisdiction to entertain J.C.T.'s petition, the Agency has not demonstrated a clear, legal right to a dismissal based on the alleged failure of J.C.T. to timely file his notice of appeal and petition for review.

Because we have determined that the circuit court has subject-matter jurisdiction over J.C.T.'s petition for judicial review and that the circuit court did not have an imperative duty to dismiss J.C.T.'s petition on the basis that it lacked subject-matter jurisdiction, the Agency has not satisfied its burden for mandamus relief insofar as it seeks a writ of mandamus directing the circuit court to dismiss the underlying action.

Lastly, the Agency contends that, if this court determines that the circuit court has subject-matter jurisdiction over J.C.T.'s petition for judicial review and that the dismissal of the underlying action is not required, it, nevertheless, has a clear, legal right to have certain information contained in J.C.T.'s petition for judicial review stricken.

Specifically, it argues that the circuit court exceeded its discretion by refusing to strike certain information in J.C.T.'s petition that, it says, is not included in the record upon which the Agency based its final decision denying J.C.T.'s application for enrollment in the ID waiver program.

In Ex parte U.S. Bank National Ass'n, 148 So. 3d 1060, 1064-65 (Ala. 2014), our supreme court, when holding that a circuit court's determination on a motion to dismiss regarding a conflict-of-law issue was proper for mandamus review, opined:

> "[A] writ of mandamus is an appropriate means by which to review the following: subject-matter jurisdiction, Ex parte Johnson, 715 So. 2d 783 (Ala.1998); standing as a component of subject-matter jurisdiction, Ex parte HealthSouth Corp., 974 So. 2d 288 (Ala. 2007); nonjusticiability as a component of subject-matter jurisdiction, Ex parte Valloze, 142 So. 3d 504 (Ala. 2013); personal jurisdiction, Ex parte Duck Boo Int'l Co., 985 So. 2d 900 (Ala. 2007); immunity, Ex parte Butts, 775 So. 2d 173 (Ala.2000); failure to exercise due diligence in identifying, before expiration of the statute of limitations, a fictitiously named defendant as the party to be sued, Ex parte Chemical Lime of Alabama, Inc., 916 So. 2d 594 (Ala. 2005); a denial of a motion for a change of venue when venue has been challenged as improper, Ex parte Daniels, 941 So. 2d 251 (Ala. 2006); a denial of a motion to dismiss where the doctrine of forum non conveniens is applicable, Ex parte Kia Motors America, Inc., 881 So. 2d 396 (Ala. 2003); a refusal to enforce an outbound forum-selection clause when the issue is presented in a motion to dismiss, Ex parte Bad Toys Holdings,

Inc., 958 So. 2d 852 (Ala. 2006); class certification, Ex parte Caremark RX, Inc., 956 So. 2d 1117 (Ala. 2006); a motion to dismiss an action based on abatement, Ex parte J.E. Estes Wood Co., 42 So. 3d 104 (Ala. 2010); the grant of a motion adding a real party in interest, Ex parte Tyson Foods, Inc., 146 So. 3d 1041 (Ala. 2013); the availability of a jury trial, Ex parte BancorpSouth Bank, 109 So. 3d 163 (Ala. 2012); a ruling on a motion to dismiss a counterclaim that was a compulsory counterclaim in a previous action, Ex parte Cincinnati Ins. Co., 806 So. 2d 376 (Ala. 2001); rulings on discovery motions where a privilege is disregarded, when discovery orders the production of patently irrelevant or duplicative documents such as to clearly constitute harassment or impose a burden on the producing party far out of proportion to any benefit that may be obtained by the requesting party, when the court imposes a sanction effectively precluding a decision on the merits or denies discovery going to a party's entire action or defense so that the outcome is all but determined and the petitioner would merely be going through the motions of a trial to obtain an appeal, or when the trial court impermissibly prevents the petitioner from making a record on the discovery issue so that the appellate court cannot review the effect of the trial court's alleged error, Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810 (Ala. 2003); denial of a motion objecting to the appointment of a special master, Ex parte Alabama State Pers. Bd., 54 So. 3d 886 (Ala. 2010); grant of a motion to set aside previous supersedeas bond amount, Ex parte Mohabbat, 93 So. 3d 79 (Ala. 2012); indefinite stay of an action, Ex parte American Family Care, Inc., 91 So. 3d 682 (Ala. 2012); a trial court's failure to comply with an appellate court's instruction on remand, Ex parte Williford, 902 So. 2d 658 (Ala. 2004); ruling on denial of motion to admit an uncontested will to probate where a finding that the testator lacked testamentary capacity was not precluded by the appointment of a conservator, Toler v. Murray, 886 So. 2d 76 (Ala. 2004).

> "Although this list may seem to contradict the nature of mandamus as an extraordinary writ, we note that the use of mandamus review has essentially been limited to well recognized situations where there is a clear legal right in the petitioner to the order sought; an imperative duty upon the respondent to perform, accompanied by a refusal to do so; the lack of another adequate remedy; and properly invoked jurisdiction of the court. Those well recognized situations include making sure that an action is brought in the correct court (e.g., subject-matter jurisdiction and venue) and by the correct parties (e.g., personal jurisdiction and immunity), reviewing limited discovery rulings (e.g., patently irrelevant discovery), and reviewing erroneous decisions by a trial court where there is a compelling reason not to wait for an appeal (e.g., abatement)."

In Ex parte U.S. Bank National Ass'n, the supreme court observed that it was apparent on the face of the complaint that the case presented a conflict-of-law issue -- a disputed and difficult question of law -- and that, to promote judicial economy, it was incumbent on the court to consider the issue to provide a correct answer to the question of law.

The Agency is correct that, generally, a circuit court, when conducting its judicial review of an agency decision, cannot consider any new evidence or arguments made by the petitioner. See § 41-22-20(i)(providing that, except when judicial review is by trial de novo, "a reviewing court shall not itself hear or accept any further evidence with

respect to those issues of fact whose determination was entrusted by law to the agency"); see also Joyner v. City of Bayou La Batre, 572 So. 2d 492, 493 (Ala. Civ. App. 1990). However, a petition for the writ of mandamus "does not lie to review the proceedings of an inferior court on the ground that they were erroneous." State v. Cannon, 369 So. 2d 32, 33 (Ala. 1979). The propriety of a trial court's determination on a motion to strike and the admissibility and consideration of evidence do not fall within the parameters for mandamus review and do not present disputed or difficult questions of law that cannot be addressed on appeal. Rather, the correctness of a circuit court's judgment addressing a motion to strike and the propriety of an agency's decision based on the evidence in the record is frequently reviewed on appeal. City of Birmingham v. Jenkins, [Ms. 2190224, Dec. 11, 2020] ___ So. 3d ___ (Ala. Civ. App. 2020)(holding on appeal that the trial court did not err in denying a party's motion to strike); Alabama Medicaid Agency v. Kerby, 84 So. 3d 95 (Ala. Civ. App. 2011)(holding that, based on the record, the circuit court had erred in reversing the Agency's decision); and Clements v. Olive, 274 Ala. 210, 211,

147 So. 2d 818, 819 (1962)(holding on appeal that the trial court did not exceed its discretion in denying motion to strike).

Here, the Agency has an adequate remedy by appeal and mandamus relief is improper. If the circuit court's judgment ultimately rests upon evidence or arguments that are not part of the record, the Agency will have preserved its objection and the circuit court's decision may be reviewed on appeal. See Ex parte Williamson, 507 So. 2d 407, 416-17 (Ala. 2004)(recognizing that the failure to object to the admission of evidence results in a waiver of the argument, that the evidence was inadmissable on appeal). Because "[a] writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal," Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998), and because determinations regarding consideration of evidence in the record and arguments made in the trial court are frequently reviewed on appeal, the Agency has not demonstrated a clear, legal right to mandamus relief in this regard.

Conclusion

Based on the foregoing, the Agency has not demonstrated a clear, legal right to the requested relief. Therefore, the petition is denied.

PETITION DENIED.

Hanson, J., concurs.

Moore, J., concurs specially, which Fridy, J., joins.

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

MOORE, Judge, concurring specially.

I fully concur with the main opinion. I write specially to address the specious argument made by the Alabama Medicaid Agency ("the Agency") that J.C.T., by filing the petition for judicial review in his own name and not through a next friend or a guardian ad litem, see Rule 17(b), Ala. R. Civ. P., thereby admitted his competency and his ineligibility for the ID waiver program.

The law provides a party aggrieved by a final decision of the Agency denying his or her enrollment in the ID waiver program the right to appeal and to seek judicial review of that decision. See Ala. Code 1975, § 41-22-20(a). Assuming, without deciding, that an incompetent person can file a petition for judicial review only through a next friend or a guardian ad litem, the Agency has cited no law providing that the mere failure to name a next friend or a guardian ad litem as the nominal representative of an incompetent plaintiff equates to a judicial admission of the competency of the plaintiff or otherwise estops the plaintiff from claiming incompetency. See Rule 28(a)(10), Ala. R. App. P. In my opinion, at worst, the omission would amount to only a procedural defect in the

pleadings, as the Montgomery Circuit Court concluded, with no other implications on the litigation. I find it beyond egregious that the Agency is attempting to prevail on the merits based on a technicality in the pleadings to the detriment of an individual with obvious intellectual disabilities.

Furthermore, in this context, if the Agency is correct, an aggrieved party would be placed in a Catch-22 situation by which the exercise of his or her legal right under § 41-22-20(a) to an appeal and judicial review would jeopardize his or her eligibility for the ID waiver program, which would be unconscionable. I am incredulous that the Agency, which is charged with the responsibility for administering the Medicaid laws for the benefit of Alabama's citizenry, would advance such a preposterous argument. Suffice it to say that equitable estoppel is intended "to promote equity and justice in an individual case by preventing a party from asserting rights under a general technical rule of law when his own conduct renders the assertion of such rights contrary to equity and good conscience." Mazer v. Jackson Ins. Agency, 340 So. 2d 770, 772 (Ala. 1976). Neither J.C.T. nor any other future unsuccessful applicant for the

ID waiver program should be estopped from asserting his or her eligibility merely by filing a petition for judicial review in his or her own name to contest the denial of enrollment in the program.[7] To the contrary, in good conscience, the Agency should be admonished for asserting such an unjust position, neither clever nor inspired.

Fridy, J., concurs.

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[7]The materials before the court do not reveal who actually drafted and filed the petition for judicial review. Given J.C.T.'s intellectual and other limitations, it is highly unlikely he did so independently, as the Agency seems to imply in its argument.