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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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Shelby Dockery

v.

City of Jasper

**Appeal from Walker Circuit Court
(CV-03-706.80)**

EDWARDS, Judge.

This is the second appeal in this case. See Dockery v. City of Jasper, 303 So. 3d 483 (Ala. Civ. App. 2020). Shelby Dockery appeals from an

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order entered by the Walker Circuit Court ("the trial court"), on remand from this court, dismissing his damages claims against the City of Jasper ("the City"). We dismiss this appeal as having been taken from a nonfinal judgment.

A detailed discussion of the underlying litigation is found in Dockery. For purposes of the present appeal, we note that, in June 2003, Dockery was discharged from his employment as a police officer for the City. Dockery appealed his discharge to the Jasper Civil Service Board ("the Board"). The Board conducted de novo proceedings and entered an order on September 9, 2003, upholding Dockery's discharge. Dockery timely filed a notice of appeal in the trial court ("the administrative appeal"), but, other than docketing the administrative appeal, no substantive action was taken by the trial court on that appeal for several years.

Purportedly in compliance with a February 1, 2011, pretrial order, Dockery filed an "amended complaint" in the trial court on December 23, 2011. In addition to seeking review of the September 2003 order, the amended complaint included various claims for damages, including both

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state-law claims and federal-law claims purportedly arising out of or otherwise related to Dockery's alleged wrongful discharge ("the damages claims"). The City filed an answer to Dockery's amended complaint, denying the pertinent allegations thereof and asserting numerous affirmative defenses.¹

After an additional trial setting and hearing, and after further filings by, conferences with, and arguments from the parties, the trial court held a status conference on June 18, 2018. That same day, the trial court entered a judgment affirming the September 2003 order as to the administrative appeal and denying the damages claims. Dockery appealed to this court.

In Dockery, we reversed the June 2018 judgment and remanded the cause to the trial court. As to the administrative appeal, a majority of this court determined that the June 2018 judgment was due to be reversed based on the City's lack of compliance with the written-charges requirement of § 14(a) of Act No. 113, Ala. Acts 1965 (1st Spec. Sess.), in

¹According to Dockery, the City had agreed at the pretrial conference not to assert such defenses.

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the underlying proceedings before the Board. 303 So. 3d at 499-500. We reversed that part of the judgment and instructed the trial court to remand the case "to the Board for proceedings consistent with this [court's] opinion." Id. at 500. As to the damages claims, this court determined that Dockery had failed to invoke the original jurisdiction of the trial court as to those claims, and we reversed that part of the judgment and remanded the cause to the trial court.² Id. at 501-02.

This court issued the opinion in Dockery on February 28, 2020. On March 2, 2020, the trial court entered an order that stated:

²A majority of this court agreed that, through the damages claims, Dockery sought the adjudication of an independent cause of action against the City that "requir[ed] the proper invocation of the trial court's original jurisdiction by satisfying the requirements for instituting a collateral action -- i.e., a separate action -- in that court," which Dockery had failed to do. 303 So. 3d at 500. As to the proper disposition on appeal, the main opinion, in which Judge Edwards and Judge Hanson concurred, determined that the June 2018 judgment was due to be reversed and that the damages claims were due to be dismissed by the trial court on remand. 303 So. 3d at 501-02. Presiding Judge Thompson and Judge Donaldson concurred in the result. Judge Moore opined that the June 2018 judgment should be vacated, instead of reversed, as to the damages claims and that the appeal as to those claims should be dismissed. Dockery, 303 So. 3d at 507 (Moore, J., concurring in part and dissenting in part).

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"1. This cause is remanded to the ... Board for further proceedings in accordance with Dockery].

"2. [Dockery's] damages claims are dismissed without prejudice."

On March 24, 2020, this court issued its certificate of judgment in Dockery.

On April 1, 2020, Dockery filed in the trial court a "Notice of Payment of Filing Fee and Reinstatement of Claims for Damages Against the City of Jasper" ("the notice of reinstatement"). Dockery filed the notice of reinstatement in the circuit-court case number that had been assigned to the administrative appeal and the damages claims. He alleged that the trial court had been without jurisdiction to enter the March 2020 order, that that order was void, and that he had paid the proper filing fee for instituting a collateral action in conjunction with the notice of reinstatement. He further alleged that he thus had cured the defect as to the damages claims, which, he said, "were previously asserted in [his] amended complaint" that he incorporated into the notice of reinstatement. The notice of reinstatement concluded: "WHEREFORE, premises considered, [Dockery] files this notice of payment and

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reinstatement pursuant to Rule 78, Alabama Rules of Civil Procedure and prays the Court return plaintiff's claims for damages against the City ... on its next available trial docket." (Capitalization in original.) Dockery made no reference in the notice of reinstatement to whether the remand to the Board likewise would have been affected by the trial court's lack of jurisdiction to enter the March 2020 order.

On April 9, 2020, the City filed a motion to dismiss Dockery's amended complaint (referencing his December 2011 complaint) pursuant to Rule 12(b)(6), Ala. R. Civ. P., or, in the alternative, to enter a summary judgment against Dockery as to the damages claims ("the motion to dismiss"). According to the City, Dockery had not invoked the trial court's jurisdiction as to the damages claims before those claims were barred by the statute of limitations. See Ala. Code 1975, § 6-2-38. Specifically, the City argued that Dockery had failed to "pa[y] the filing fee or receive[] the approval of an affidavit of substantial hardship as a jurisdictional prerequisite to the commencement of his collateral action" as to the damages claims. The City made no reference to the March 2020 order.

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On June 9, 2020, Dockery filed a motion requesting the recusal of Judge Hoyt Elliott, who was presiding over the case, based on what he alleged was "systemic bias against [Dockery]." On June 15, 2020, the trial court entered an order denying Dockery's motion to recuse and setting the motion to dismiss for a hearing. Dockery filed a motion to reconsider the denial of his motion to recuse. The trial court entered an order denying that motion on June 23, 2020. Dockery timely filed a petition for a writ of mandamus with the supreme court regarding the denial of his motion to recuse. The supreme court entered an order denying that petition on August 11, 2020. Ex parte Dockery (No. 1190790, Aug. 11, 2020). In the interim, on June 26, 2020, Dockery filed a response to the motion to dismiss. Dockery contended that he had reinstated the damages claims against the City pursuant to Rule 78; that the City had waived, or was estopped from asserting, the statute of limitations as a defense based on its purported previous agreement not to raise such affirmative defenses as to the damages claims (see note 1, supra); and that the statute of limitations had been tolled until the Board issued its decision as to his allegedly wrongful discharge by the City.

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On September 18, 2020, the City filed an amendment to the motion to dismiss. In the amendment, the City argued that Dockery had never properly invoked the trial court's original jurisdiction as to the damages claims, that the trial court had dismissed those claims via the March 2020 order, and that, regardless of whether the trial court had had jurisdiction when it entered the March 2020 order, Dockery could not cure the defect as to jurisdiction regarding the damages claims by purporting to amend his pleadings pursuant to Rule 78, particularly after this court had issued the decision in Dockery. The City again argued, alternatively, that, even if the damages claims remained pending before the trial court, those claims were barred by the statute of limitations. The City likewise suggested that the damages claims might be moot, although it did not use the term "moot," because the Board had conducted further proceedings, had reversed the City's decision to terminate Dockery's employment, and had ordered his reinstatement. As noted below, however, the Board apparently had denied Dockery's request for backpay. See note 5, infra. The City requested that the trial court dismiss the damages claims, with prejudice or, in the alternative, without prejudice.

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On October 15, 2020, Dockery filed a response to the City's amended motion to dismiss; the City thereafter filed a reply to Dockery's response; and the trial court held a hearing on the City's motion to dismiss, as amended, on November 18, 2020.³ On December 8, 2020, the trial court entered an order granting the City's amended motion to dismiss, specifically determining that, "[o]n March 2, 2020, this Court entered an Order dismissing [Dockery's] damages claims and remanding the cause to the ... Board." The trial court further stated that the "damages claims are DISMISSED as previously order[ed] in this Court's [March 2020] order" and the notice of reinstatement was "DENIED."⁴ (Capitalization in original.)

Dockery filed a purported postjudgment motion, requesting that the trial court vacate the December 2020 order. After a hearing on that motion on February 2, 2021, the trial court entered an order denying

³The trial court also received arguments as to a motion to disqualify that Dockery had filed regarding the City's counsel. The trial court denied that motion during the hearing.

⁴The December 2020 order also dismissed two amendments to his complaint that Dockery had attempted to file on October 13, 2020, and November 17, 2020.

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Dockery's purported postjudgment motion on February 16, 2021. On February 25, 2021, Dockery filed a notice of appeal to the supreme court, which transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

On appeal, Dockery argues, among other issues, that, despite the trial court's attempts to follow our mandate in Dockery regarding the dismissal of the damages claims, he "initiated a new action on April 1, 2020, wherein he invoked the trial court's original jurisdiction." But see, e.g., Ex parte Insurance Co. of N. Am., 523 So. 2d 1064, 1068 (Ala. 1988)("[O]ur decisions support the principle that a trial court, when considering motions on remand, must abide by and act in accordance with the mandate of the higher court."). See generally 36 C.J.S. Federal Courts § 769 (2014) ("The lower court is without power to allow an amended pleading to be filed after the cause has been remanded ... where the cause is remanded with specific directions as to the judgment or decree to be rendered"). However, we pretermitt discussion of Dockery's arguments because of a jurisdictional issue.

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"It is a settled jurisprudential principle that an appellate court must initially consider whether it has jurisdiction to hear and decide an appeal: '[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)."

Alabama Dep't of Revenue v. WestPoint Home, LLC, 256 So. 3d 1197, 1199 (Ala. Civ. App. 2018). "The question whether a judgment is final is a jurisdictional question, and the reviewing court, on a determination that the judgment is not final, has a duty to dismiss the case." Owens v. Owens, 739 So. 2d 511, 513 (Ala. Civ. App. 1999). For a judgment to be final, it must "put[] an end to the proceedings between the parties to a case and leave[] nothing for further adjudication." Ex parte Wharfhouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001).

"The test of finality of a judgment or decree to support an appeal is whether such judgment or decree 'ascertains and declares such rights embracing the substantial merits of the controversy and the material issues litigated or necessarily involved in the litigation.' McClurkin v. McClurkin, 206 Ala. 513, 514, 90 So. 917, 918 (1921)."

Morton v. Chrysler Motors Corp., 353 So. 2d 505, 507 (Ala. 1977).

Our reversal of the June 2018 judgment in Dockery wholly annulled that judgment, ""as if it never existed."" Ex parte B.N., 203 So. 3d

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1234, 1240 (Ala. Civ. App. 2016) (quoting Raybon v. Hall, 17 So. 3d 673, 676 (Ala. Civ. App. 2009), quoting in turn Shirley v. Shirley, 361 So. 2d 590, 591 (Ala. Civ. App. 1978)). See also, e.g., First Nat'l Bank v. Garrison, 235 Ala. 94, 95, 177 So. 631, 632 (1937). This court did not render a judgment in place of the June 2018 judgment. Instead, the trial court was required to enter a judgment addressing its disposition of the administrative appeal and the damages claims after it obtained jurisdiction of the case on remand. The trial court purported to enter such a dispositive order, i.e., the March 2020 order, but that order was entered before this court had issued the certificate of judgment in Dockery and, thus, was void for lack of jurisdiction. See, e.g., Ex parte Wynn, 227 So. 3d 534, 535 (Ala. Civ. App. 2017). Accordingly, no judgment has been entered by the trial court addressing the administrative appeal, and the December 2020 order is not a final judgment.⁵

⁵It appears that, after the entry of the March 2020 order, the Board proceeded to conduct additional proceedings in the summer of 2020 as to Dockery's 2003 discharge from his employment by the City. Based on certain statements appearing in the record, the Board apparently concluded that the City should not have terminated Dockery's employment and ordered his reinstatement in August 2020. The Board

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Based on the foregoing, Dockery's appeal from the December 2020 order is dismissed.⁶

APPEAL DISMISSED.

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

also denied Dockery's request for backpay in November 2020. We express no opinion regarding the foregoing proceedings before the Board.

⁶We acknowledge that "[a] petition for a writ of mandamus is the proper method for bringing before an appellate court the question whether a trial court, after remand, has complied with the mandate of this Court." Ex parte Edwards, 727 So. 2d 792, 794 (Ala. 1998). However, the issues in this case involve the disposition of attempts to commence a new action. Even if we were to conclude that Dockery's appeal should be treated as a petition for a writ of mandamus, he failed to timely file that petition so that we could consider it. See, e.g., Ex parte Murray, 267 So. 3d 328, 331 (Ala. Civ. App. 2018) (dismissing a petition for a writ of mandamus as untimely and noting that such "[a] petition ... must be filed within a reasonable time, which has been held to be the same time for taking a timely appeal" and noting that "[t]he husband's purported postjudgment motion did not operate to extend the time for timely filing the petition for a writ of mandamus").