

Rel: November 4, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

2200956

Gary Lee Johnson

v.

City of Tuscaloosa

**Appeal from Tuscaloosa Circuit Court
(CV-21-89)**

THOMPSON, Presiding Judge.

Gary Lee Johnson appeals the judgment of the Tuscaloosa Circuit Court ("the circuit court") dismissing his appeal from a resolution adopted by the Tuscaloosa City Council ("the city council") that ordered

the demolition of a structure located on 11th Street East ("the building").

We reverse and remand.

On May 4, 2021, the city council adopted a resolution finding the building to be unsafe and a public nuisance and ordering its demolition. On May 14, 2021, Johnson, the owner of the building, acting pro se, filed a document, entitled "complaint," in the circuit court, which was treated as initiating an appeal of the city council's resolution pursuant to § 11-53B-4, Ala. Code 1975. The document named the mayor of Tuscaloosa and the city council as defendants.¹ In the body of the document, Johnson discussed the difficulties he had experienced in trying to maintain and repair the building and asked the circuit court to "[p]lease help [him] save [his] home." Johnson submitted with the document an affidavit of substantial hardship requesting a waiver of the requirement under § 11-53B-4 that he file a "bond for security of costs." That same day the clerk of the circuit court docketed Johnson's appeal. On May 24, 2021, the

¹In addition to naming the mayor and the city council as defendants, Johnson also named the Tuscaloosa City Building Inspector as a defendant. Because the circuit court's judgment of dismissal was entered in response to a motion filed by the City of Tuscaloosa, this court has restyled this appeal to reflect that the City of Tuscaloosa is the appellee.

circuit court entered an order finding that Johnson was indigent and waiving the requirement under § 11-53B-4 that he file a bond as security for costs.

On June 11, 2021, the City of Tuscaloosa ("the city") filed a motion to dismiss, alleging, among other things, that because, pursuant to § 11-53B-4, Johnson's appeal from the May 4, 2021, resolution had to be perfected within 10 days of the city council's decision, i.e., by May 14, 2021, and, it said, Johnson's appeal had not been perfected until the circuit court granted him a waiver of the bond requirement on May 24, 2021, Johnson's appeal was untimely and, therefore, due to be dismissed.² The city attached a copy of the May 4, 2021, resolution to its motion to dismiss. On July 6, 2021, Scott Holmes, an attorney for the city, accepted service of Johnson's appeal.

On July 7, 2021, the circuit court conducted a hearing to address the city's motion to dismiss. Johnson was present at the hearing. After

²According to the city's appellate brief, before the city acts on a resolution ordering the demolition of a structure, an attorney for the city, pursuant to standard pattern and practice, searches the Alacourt judicial electronic filing system for any filing in the circuit court challenging the resolution. The city states that, upon finding Johnson's appeal docketed in the Alacourt system, it filed its motion to dismiss.

considering the parties' arguments, the circuit court found that Johnson's appeal had not been timely perfected, and it dismissed the appeal. A transcript of that hearing is not included in the record.

On August 13, 2021, Johnson filed a notice of appeal to the Alabama Supreme Court. On August 31, 2021, the supreme court transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975. On August 10, 2022, this court conducted oral argument.

The city's motion to dismiss was filed pursuant to Rule 12(b)(1), Ala. R. Civ. P., and it sought the dismissal of Johnson's appeal of the May 4, 2021, resolution on the ground that Johnson had not timely perfected his appeal and, therefore, the circuit court had never acquired subject-matter jurisdiction over the appeal. See Clanton v. DeAngelo, 984 So. 2d 451, 453 (Ala. Civ. App. 2007)(explaining that a party must timely file a notice of appeal to invoke the subject-matter jurisdiction of a circuit court serving as an appellate court), and Smith v. Estes, 47 So. 3d 1251, 1252-53 (Ala. Civ. App. 2010). Whether a circuit court acquires subject-matter jurisdiction over an appeal presents a question of law; thus, we conduct a de novo review of the circuit court's judgment dismissing Johnson's

appeal. Banks v. Estate of Woodall, 129 So. 3d 294, 295-96 (Ala. Civ. App. 2013).

On appeal Johnson contends that the circuit court erred in dismissing his appeal because, he says, by filing his "complaint" and an affidavit of substantial hardship requesting a waiver of the bond requirement within 10 days of the adoption of the city council's resolution, he satisfied the requirements of § 11-53B-4 to perfect his appeal. The city maintains that the circuit court properly dismissed Johnson's appeal on the ground that it was not timely perfected because, it says, Johnson did not file the statutorily required bond or obtain a waiver of the bond requirement within 10 days of the adoption of the city council's resolution.³

It is undisputed that Johnson filed his "complaint" and his affidavit of substantial hardship requesting a waiver of the bond requirement within 10 days of the adoption of the city council's resolution ordering the demolition of the building. The parties do not dispute that § 11-53B-4

³At oral argument neither party contested that the bond requirement could be waived; rather, the city argued that to perfect an appeal under § 11-53B-4, a party had to obtain a waiver of the bond requirement within 10 days of the governing body's decision.

requires that, to invoke the circuit court's jurisdiction, a party appealing the decision of a governing body must file a notice of appeal within 10 days of the governing body's decision and that Johnson satisfied this requirement. The parties do dispute whether the timely filing of a "bond for security of costs" is a jurisdictional requirement for perfecting an appeal under § 11-53B-4 and, if so, whether the filing an affidavit of substantial hardship requesting a waiver of the bond requirement within 10 days of a governing body's decision adequately satisfies the requirement.

First, we consider whether the provision in § 11-53B-4 requiring a party to file a "bond for security of costs" within 10 days of the governing body's decision sets forth a jurisdictional or procedural requirement. Consideration of this issue involves statutory interpretation.

"In interpreting a statute, [an appellate court] must ascertain and effectuate the intent of the Legislature as expressed by the statute. Employees' Retirement Sys. of Alabama v. Head, 369 So. 2d 1227 (Ala. 1979). When determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute. Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1045 (Ala. 1991). When the language is clear, there is no room for judicial construction. Employees' Retirement System, 369 So. 2d at 1228.

Water Works & Sewer Bd. of Selma v. Randolph, 833 So. 2d 604, 607 (Ala. 2002).

Johnson's appeal was filed pursuant to § 11-53B-4, which provides, in pertinent part:

"In the event that it is determined by the governing body that the building or structure is unsafe to the extent that it is a public nuisance, the governing body shall order the building or structure to be repaired or demolished, as the case may be. The repairs or demolition may be accomplished by the municipality by contract for the repairs or demolition. The municipality shall have authority to sell or otherwise dispose of salvaged materials resulting from any demolition hereunder.

"Any person aggrieved by the decision of the governing body at the hearing may, within 10 days thereafter, appeal to the circuit court upon filing with the clerk of the court notice of the appeal and bond for security of costs in the form and amount to be approved by the circuit clerk. Upon filing of the notice of appeal and approval of the bond, the clerk of the court shall serve a copy of the notice of appeal on the clerk of the city and the appeal shall be docketed in the court, and shall be a preferred case therein."

Section 11-53B-4 is silent as to whether the filing of the "bond for security of costs" is a jurisdictional requirement. Cf. § 40-2A-7(b)(5)c.1., Ala. Code 1975 (identifying certain requirements as jurisdictional). To support its contention that § 11-53B-4 requires the timely filing of the bond or the timely approval of a waiver of the bond requirement to perfect

an appeal, the city cites Lumpkin v. State, 171 So. 3d 599 (Ala. 2014), a case that required our supreme court to consider whether a taxpayer, who, pursuant to § 40-3-25, Ala. Code 1975, had timely filed his notices of appeal in the appropriate circuit court but had not timely filed the statutorily required bonds, had perfected his appeal. In Lumpkin, the taxpayer filed in the circuit court notices of appeal from three property-tax assessments of the Jefferson County Board of Equalization. Section 40-3-25 provides that a taxpayer, when appealing such a decision, "shall," within 30 days of the board's decision, "file notice of said appeal with the secretary of the board of equalization and with the clerk of the circuit court and ... file bond to be filed with and approved by the clerk of the circuit court, conditioned to pay all costs." Additionally, § 40-3-25 provides:

"When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same becomes delinquent; and, upon failure to do so, the court upon motion ex mero motu must dismiss the appeal, unless at the time of taking the appeal the taxpayer has executed a supersedeas bond with sufficient sureties to be approved by the clerk of the circuit court in double the amount of taxes."

Although the taxpayer filed the notices of appeal within the requisite time, he did not timely file the requisite bonds. The circuit court

dismissed the taxpayer's appeals based on the taxpayer's failure to timely file the bonds.

On appeal, the taxpayer asked our supreme court to determine whether or not the filing of the bond set forth in § 40-3-25 is a jurisdictional requirement for perfecting an appeal. The supreme court observed that, to perfect an appeal pursuant to § 40-3-25, an appealing taxpayer must complete multiple acts within 30 days of the final decision of the board of equalization: "1) the filing of a notice of appeal with the secretary of the board of equalization; 2) the filing of a notice of appeal with the circuit court; and 3) the filing of a bond with the circuit court." 171 So. 3d at 605. The supreme court held that § 40-3-25 requires the filing of a bond, "conditioned to pay all costs" within 30 days of the board's decision to invoke the circuit court's jurisdiction over an appeal. Because the taxpayer had not filed the statutorily required bonds within 30 days of the assessments of the board of equalization, our supreme court held, the taxpayer had not perfected his appeals in the circuit court and the circuit court therefore had properly dismissed the taxpayer's appeals.

The Lumpkin court opined:

"We recognize that the filing of a bond is considered to be a procedural requirement as opposed to a jurisdictional

requirement in many other appellate proceedings, including general appeals to this Court or the Court of Civil Appeals, appeals to a circuit court from a district court, and appeals to a circuit court from decisions of certain state agencies. However, it must be recognized that the basis of each of those types of appeals stems from a statute other than § 40-3-25, and, although in some cases the relevant statutes are similar, they are never identical, and the language of each statute must be interpreted individually."

171 So. 3d at 604.

In reaching its conclusion that, under § 40-3-25, the filing of the bond within 30 days was a jurisdictional requirement, the Lumpkin court considered Mallory v. Alabama Real Estate Commission, 369 So. 2d 23 (Ala. Civ. App. 1979), State Department of Human Resources v. Funk, 651 So. 2d 12 (Ala. Civ. App. 1994), and Luce v. Huddleston, 628 So. 2d 819 (Ala. Civ. App. 1993),⁴ three cases holding that the filing of a bond when appealing a decision to the circuit court is a procedural requirement. The Lumpkin court observed that this court's analyses in Mallory and Funk were correct because the applicable statutes at issue in those cases did not require the contemporaneous filing of a notice of

⁴As the supreme court noted in Lumpkin, this court had "reaffirmed its holding in Luce as recently as 2013 in Penick v. Southpace Management, Inc., 121 So. 3d 1015 (Ala. Civ. App. 2013)." 171 So. 3d at 607 n.5

appeal and a bond within a designated period. Our supreme court observed that, although the applicable statute in Mallory required the appealing party to "post a satisfactory bond," the statute did not require the party to file the bond within a certain period. The supreme court then reasoned that, given the lack of definiteness as to when the bond must be filed, the Court of Civil Appeals had properly applied the principle embodied in the Alabama Rules of Appellate Procedure that the filing of a notice of appeal with the court clerk invokes the appellate court's jurisdiction, that the appeal in Mallory was perfected upon the filing of the notice of appeal, and that the filing of the bond was merely a procedural requirement. Likewise, the Lumpkin court observed that in Funk the applicable statute did not include the requirement of filing of a bond in the subsection providing the 30-day period for initiating an appeal and that, therefore, this court had properly concluded that the filing of the bond was merely a procedural requirement. Because the statutes at issue in Mallory and Funk did not designate a specific period during which the requirement of filing a bond had to be fulfilled, the supreme court agreed with this court's reasoning in those cases that the filing of a bond as set forth in the statutes at issue was a procedural, not

a jurisdictional, requirement. 171 So. 3d 604-07.

The Lumpkin court observed that Luce involved the interpretation of § 12-12-70(a), Ala. Code 1975, which provides, in pertinent part: "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, ... together with security for costs as required by law or rule." In Luce, this court had relied on the reasoning in Mallory, which, as discussed earlier, had applied the principle embodied in the Rules of Appellate Procedure that the filing of a notice of appeal with the court clerk invokes the appellate court's jurisdiction and had held that, under the statute at issue, the filing of a bond when appealing a decision to the circuit court was merely a procedural requirement, to conclude that the filing of a bond after the statutorily designated period for filing the notice of appeal of a district-court judgment to a circuit court had expired did not create a jurisdictional defect. The supreme court disagreed with the application of the reasoning in Mallory to the facts in Luce, noting that neither the statute interpreted in Mallory nor the Alabama Rules of Appellate Procedure required the timely filing of a bond when filing a

notice of appeal. The supreme court then observed that § 12-12-70(a), the statute at issue in Luce, required the timely filing of both a notice of appeal and a bond and that, therefore, the bond requirement in that statute was jurisdictional. The supreme court reiterated in Lumpkin that "whether a mandated cost bond is required to be filed within the statutory period for taking an appeal always depends on the language of the applicable statute authorizing that particular appeal." 171 So. 3d at 609.

The language in § 11-53B-4 is similar to the language in § 40-3-25 the statute analyzed in Lumpkin; both statutes require the contemporaneous filing of a notice of appeal and a bond for security of costs within a statutorily designated period. Section 11-53B-4 provides that, when appealing a governing body's decision, the appealing party must, within 10 days of the governing body's decision: (1) file a notice of appeal in the circuit court and (2) file a "bond for security of costs in the form and amount to be approved by the circuit clerk." However, unlike § 40-3-25, the statute analyzed in Lumpkin, which provides a taxpayer and the clerk of court with a definite means of determining the amount of the bond an appealing taxpayer is required to file to perfect an appeal,

the language in § 11-53B-4 is vague, ambiguous, and subject to various interpretations with regard to the amount of the bond to be posted and its approval by the clerk of the circuit court. Section 11-53B-4 is silent as to the definition and the purpose of the "bond for security of costs." It does not state how the court clerk or the appealing party is to determine the amount of the bond, i.e., whether the bond is for costs incurred by the governing body while its order is stayed pending resolution of the appeal, for the court fees associated with the appeal, or for both. Unlike a tax assessment, which by its nature sets forth a definite sum from which the amount of a bond can be determined, a resolution ordering the demolition of a structure does not necessarily set forth a sum certain from which the court clerk can derive the appropriate amount of a bond. This ambiguity was highlighted at oral argument in this case when the parties acknowledged that the record does not reflect the amount of the "bond for security of costs" assessed in this case. Although the parties appeared to maintain that the required bond is not a supersedeas bond intended to cover the costs incurred by the city while action on the resolution is stayed pending resolution of the appeal but, rather, a bond for court fees associated with the appeal, neither party provided a statutory reference

or citation to the record to support that contention.

We recognize that in Hand v. Thornburg, 425 So. 2d 467, 469 (Ala. Civ. App. 1982), when considering whether an appellant had provided sufficient bond for costs to perfect an appeal from a district-court judgment to the appropriate circuit court, this court stated:

"'Security for costs' is defined as the '[p]ayment into court in the form of cash, property or bond by a plaintiff or an appellant to secure the payment of costs if such person does not prevail ...' (Emphasis supplied). Black's Law Dictionary 1217 (5th ed. 1979). A cost bond or bond for costs is therein defined to be 'a bond given by a party to an action to secure the eventual payment of such costs as may be awarded against him. A bond which may be required of an appealing party in a civil case ...' Black's Law Dictionary 313 (5th ed. 1979). At a time when title 7, section 792 of the Code of Alabama 1940 required that an appeal be taken by the appellant giving 'security for costs,' the supreme court repeatedly referred to such security as being an 'appeal bond.' Dollar v. McKinney, 267 Ala. 627, 103 So. 2d 785 (1958); McKinstry v. Thomas, 258 Ala. 690, 64 So. 2d 808 (1953).

"... A bond for costs is filed to secure the payment of the costs. ..."

However, even if we apply the definition in Hand to the term "bond for security of costs" set forth in § 11-53B-4 and conclude that the statutorily required bond is a payment into the court to secure the payment of costs in the circuit court if the appealing party does not prevail, § 11-53B-4 still remains overly vague. Specifically, it does not

provide a designated period within which the court clerk must determine the amount of the bond or guidance as to how the court clerk should ascertain the amount of the bond. Considering the nature of the resolution being appealed -- a resolution ordering the demolition of a structure -- it appears reasonable to conclude that the amount of the bond for filing such an appeal may differ from case to case and from circuit to circuit.

Additionally, the requirement that the court clerk "approve" the bond is ambiguous. Section 11-53B-4 makes the filing of the bond dependent upon the approval of the court clerk. The statute, however, does not define the factors for the court clerk to consider when approving the bond or provide a designated period within which the court clerk must approve the bond. Consequently, a court clerk's failure to timely fulfill his or her obligations to approve the bond could also prevent an appealing party from perfecting his or her appeal.⁵

Because the language in § 11-53B-4 requiring the filing of a bond and the approval of the bond by the court clerk is vague and ambiguous,

⁵At oral argument, the city conceded that it had no knowledge as to how the court clerk determined the amount of a bond or of the factors a court clerk considers when approving a bond.

"there is no rational way to interpret the words as stated [and] ... we [will therefore] look beyond those words to determine legislative intent." DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 276 (Ala. 1998). Accordingly, we construe the language in § 11-53B-4 requiring an appealing party to file a "bond for security of costs" in a rational way that promotes the obvious intent of the legislature when it enacted this statute to create a means for an appealing party, including an indigent party, to seek judicial review of a governing body's decision to demolish a structure and to promote review of such decision on the merits.

We observe that a notice of appeal filed in a circuit court pursuant to § 11-53B-4 is an initial pleading filed in the judicial system, i.e., its filing initiates judicial review of a decision made by a body other than the judiciary. We recognize that our supreme court has held that, with regard to an original action initiated in a circuit court, the payment of a filing fee, as set forth in § 12-19-70, Ala. Code 1975, within the statutory limitations period is a jurisdictional requirement. In De-Gas, Inc. v. Midland Resources, 470 So. 2d 1218 (Ala. 1985), our supreme court noted that, to initiate an action, the plaintiffs had delivered both summonses and a complaint to the clerk of the trial court, who stamped the items

"filed" on the date they were delivered. 470 So.2d at 1219. The plaintiffs, however, did not pay the filing fee until after the statute of limitations on at least one of the plaintiffs' claims had expired. Our supreme court held that the delivery of the complaint and summonses without the payment of the filing fee did not initiate the action for statute-of-limitations purposes, stating: "[T]he most important and essential element of interruption of [the running of the limitations period] is that defendant be judicially notified of the rights which are sought and of plaintiff's intent to proceed with the action." 470 So. 2d at 1221 (quoting 54 C.J.S. Limitations of Actions § 264 at p. 294 (1948)). Accordingly, the De-Gas court held that "the payment of the fees required by § 12-19-70 or the filing of a court-approved verified statement of substantial hardship is a jurisdictional prerequisite to the commencement of an action for statute of limitations purposes." 470 So.2d at 1222.

Likewise, in Ex parte Courtyard Citiflats, LLC, 191 So. 3d 787 (Ala. 2015), our supreme court held that an action was due to be dismissed because the plaintiff had not satisfied the jurisdictional requirement of paying a filing fee or obtaining preapproval of a waiver of the fee requirement due to the plaintiff's inability to pay the filing fee before the

expiration of the statutory limitations period. Thus, our caselaw has strictly construed the payment of a filing fee as mandated by § 12-19-70 as a jurisdictional prerequisite to initiating an action for statute-of-limitations purposes.

The concerns expressed by our supreme court in De-Gas and Ex parte Courtyard Citiflats, however, are not present when a party files an appeal pursuant to § 11-53B-4. First, we note that an appellee has knowledge of the actions taken in the underlying matter, is aware that a determination has been made, and is cognizant of the fact that the opposing party may challenge that determination. For example, in this case, the city acknowledges in its brief to this court that, when a resolution ordering the demolition of a structure is entered, it recognizes that the decision may be appealed to the circuit court and that it has a standard operating procedure to search the circuit court's records for the filing of an appeal before it acts on the resolution. By filing its motion to dismiss before it had been served with Johnson's appeal, the city exhibited its knowledge that a challenge to the decision to demolish a structure was being pursued. Therefore, unlike in an original action, in which a plaintiff must file a fee to initiate an original action and to

provide a defendant with notice of the action, in an appeal pursuant to § 11-53B-4 an appellee has knowledge of the governing body's decision and is aware that the decision is subject to appeal in the circuit court. Consequently, the requirement that a plaintiff file a fee to provide notice to an opposing party to an original action is not present when a party files an appeal pursuant to § 11-53B-4; in other words, the "most important and essential element" identified by the supreme court in De-Gas is not implicated in an appeal under § 11-53B-4, and we find the reasoning in De-Gas and Ex parte Courtyard Citiflats to be inapposite.

We now consider Ex parte Alabama Department of Labor, 202 So. 3d 329 (Ala. Civ. App. 2016) ("Ex parte ADOL"), and Rubin v. Department of Industrial Relations, 469 So. 2d 657 (Ala. Civ. App. 1985), cases cited by Johnson in his appellate brief, which involve appeals from decisions of state agencies to the circuit court and hold that the filing of a bond is a procedural requirement rather than a jurisdictional one.

In Ex parte ADOL, Shunquilla L. Moore filed a complaint in the Montgomery Circuit Court, appealing the decision of the Board of Appeals for the Alabama Department of Labor ("ADOL") denying her request for unemployment-compensation benefits. The complaint was

filed pursuant to § 25-4-95, Ala. Code 1975, which provides, in pertinent part:

"Within 30 days after the decision of the board of appeals has become final, any party to the proceeding including the secretary who claims to be aggrieved by the decision may secure a judicial review thereon by filing a notice of appeal in the circuit court of the county of the residence of the claimant. ..."

Moore filed a timely complaint appealing ADOL's decision, but she did not pay a filing fee. Instead, she filed an affidavit of substantial hardship requesting a waiver of the filing-fee requirement. The trial court granted the waiver after the 30-day limitations period for filing the notice of appeal had passed. ADOL then moved to dismiss Moore's appeal, asserting that, because Moore had not paid a filing fee within the 30-day period, she had not perfected her appeal. ADOL reasoned that, because the trial court had approved the waiver after the time for filing an appeal had run, Moore's appeal was untimely filed and the trial court had not acquired subject-matter jurisdiction. The trial court denied the motion. ADOL filed a petition for a writ of mandamus in this court, asking this court to order the trial court to dismiss Moore's appeal as untimely.

In support of its petition, ADOL cited § 12-19-70(a), which provides that a docket fee "shall be ... collected from a plaintiff at the time a complaint is filed in circuit court" ADOL reasoned that, because our supreme court in De-Gas had held that the payment of the filing fee or the obtaining of a waiver of the requirement to pay that fee before the applicable statute-of-limitations period expired was a jurisdictional prerequisite for the initiation of an action and because Moore had not obtained a waiver of the filing-fee requirement before the 30-day period in § 25-4-95 had expired, Moore's appeal was untimely and should be dismissed.

This court disagreed. First, we observed that "[§] 25-4-95 does not mention the payment of a filing fee or the approval of a waiver of the filing fee as a jurisdictional requirement for filing an appeal." 202 So. 3d at 331. Consequently, we held that the payment of a filing fee or the waiver of the filing-fee requirement was not a jurisdictional requirement to perfect an appeal filed pursuant to § 25-4-95. In support of our decision, we noted that this court in Rubin v. Department of Industrial Relations, *supra*, had confronted similar circumstances and had

concluded that a circuit court had jurisdiction over an appeal. In Rubin, this court stated:

"It has been held that the timely filing of a notice of appeal is sufficient to satisfy the jurisdictional requirements of any appellate rule. Edmondson v. Blakey, 341 So. 2d 481 (Ala. 1976). Moreover, this court has held that the timely filing of a notice of appeal with the circuit court clerk pursuant to [§] 25-4-95[, Ala. Code 1975,] invokes the jurisdiction of the circuit court. Crawley v. Carter, 378 So. 2d 1139 (Ala. Civ. App. 1979). The failure to pay the filing fees initially or to obtain a waiver of such filing fee from the court may warrant sanctions, including dismissal of the appeal, at a later time. But when the notice of appeal is timely filed, the circuit court has jurisdiction of the appeal."

469 So. 2d at 658.

In Ex parte ADOL, supra, we further noted that, in Smith v. State, 660 So. 2d 1320, 1324 (Ala. Civ. App. 1995), this court, citing Rubin, had concluded that the payment of the filing fee for an appeal from a final tax assessment is not a jurisdictional prerequisite for perfecting the appeal. The appeal in Smith was filed pursuant to former § 40-2A-7(b)(5)c., Ala. Code 1975, which provided:

"[I]n the case of appeals to the circuit court, the filing of the notice of appeal with both the secretary of the department and the clerk of the circuit court in which such appeal is filed and also the payment of the assessment in full and applicable interest or the filing of a bond as provided herein are jurisdictional."

Smith, 660 So. 2d at 1324. The ADOL court observed that, in Smith, "this court noted that the wording of the statute allowing for such an appeal outlined specifically which matters [were] jurisdictional and omitted any reference to filing fees.'" 202 So. 3d at 332. The ADOL court further observed that the omission in § 25-4-95 of any reference to a filing fee "support[ed] a determination that the payment of filing fees, or the waiver thereof, is not a jurisdictional prerequisite in an appeal from the denial of unemployment compensation benefits." 202 So. 3d at 332.

In light of the ambiguity of § 11-53B-4 regarding the amount of the bond and the clerk's approval of the bond, the reasoning in Ex parte ADOL, Rubin, and Smith persuades us to construe the requirement to file a "bond for security of costs" in § 11-53B-4 as a procedural, not a jurisdictional, requirement. Application of the principle embodied in Rule 1, Ala. R. App. P., that the requirements for the filing of an appeal should be construed "to assure the just, speedy, and inexpensive determination of every appellate proceeding on its merits," and Rule 7, Ala. R. Jud. Admin., which provides for "fees for miscellaneous filings," allows for an interpretation of § 11-53B-4 that is workable for both the appealing party and the circuit-court clerk.

In this case, it is undisputed that Johnson filed a notice of appeal in the circuit court within 10 days of the adoption of the city council's resolution. Because we have concluded that the filing of a bond under § 11-53B-4 is a procedural requirement, Johnson did not have to file a bond within those 10 days to perfect his appeal. Because Johnson's appeal was perfected by the timely filing of his notice of appeal, the circuit court erred in dismissing his appeal as untimely.

Moreover, even assuming that the timely filing of a bond when initiating an appeal pursuant to § 11-53B-4 is a jurisdictional, not a procedural, requirement, we construe § 11-53B-4 so that the filing of an affidavit of substantial hardship requesting a waiver of the bond requirement within the 10-day limitations period, and not the approval of such a request by the circuit court within that period, as satisfying this requirement. We are mindful that § 11-53B-4 does not explicitly provide for the waiver of the bond requirement. We also recognize that "[a] party acting pro se must comply with legal procedure and court rules and may not avoid the effect of the rules due to unfamiliarity." Hendricks v. KW Plastics, Inc., 5 So. 3d 1289, 1291 (Ala. Civ. App. 2008)(quoting Lockett v. A.L. Sandlin Lumber Co., 588 So. 2d 889, 890 (Ala. Civ. App. 1991)).

However, as Justice Murdock explained in his dissenting opinion in Ex parte Courtyard Citiflats,

"requiring that the affidavit of substantial hardship be approved at some point before [a limitations period] expires would mean that a[n appellant's] meeting a [limitations] deadline depends not on the [appellant's] own action, but on how quickly a third party -- a trial court judge -- takes some sort of action. Such a scheme is unseemly at best, and unworkable and inequitable at worst. ... Surely the satisfaction of a [limitations period], not to mention the invocation of a court's jurisdiction, is something that is to be within the control of the [appellant] and not dependent on the actions of a third party, even if that third party is the court itself."

191 So. 3d at 798.

The legislature appears to have recognized the inequity discussed by Justice Murdock, and in 2019 the legislature modified § 12-19-70, which, as discussed earlier, sets forth the requirement of paying a filing fee for initiating civil actions, to provide that if a party files an affidavit of substantial hardship within the limitations period, the jurisdictional requirement to pay a filing fee is satisfied even though the trial court has not yet approved a waiver of the filing-fee requirement. We observe that, by amending § 12-19-70 to provide that the filing of an affidavit of substantial hardship requesting a waiver of the filing-fee requirement, and not the court's approval of that request, satisfied the jurisdictional

requirement, the legislature indicated its intent that a filing party, regardless of his or her economic status, be able to control when his or her action is perfected. The decision by the legislature to amend § 12-19-70 to provide that it is the filing of the affidavit of substantial hardship requesting a waiver of the filing-fee requirement, and not the court's approval of that request, that invokes a court's jurisdiction over a new action indicates the legislature's interest in ensuring that "even our poorest citizens receive access to our courts for the redress of perceived grievances," 191 So. 2d at 791-92, and its intent that all citizens have a fair opportunity to comply with any filing prerequisites to have their cause determined on the merits.

In light of the inequity that would be created if a trial court did not timely approve a request to waive the bond requirement if we were to construe § 11-53B-4 otherwise, we hold that the filing of an affidavit of substantial hardship requesting the waiver of the bond requirement within the 10-day limitations period serves as a substitute for the filing of the bond under § 11-53B-4, and we construe § 11-53B-4 as providing that a party who files a timely notice of appeal along with an affidavit of hardship requesting a waiver of the bond requirement has perfected the

appeal. Cf. Ex parte City of Andalusia, 324 So. 3d 872 (Ala. Crim. App. 2020)(holding that a defendant, by filing a timely request to waive the appeal-bond requirement for an appeal from a municipal-court decision to the circuit court, indicated a bona fide intent to proceed with the appeal, even though the waiver of the bond requirement was not approved within the statutorily prescribed period for filing an appeal, and that the defendant had therefore perfected his appeal).

In this case the parties agree that Johnson filed his affidavit of substantial hardship requesting a waiver of the bond requirement within 10 days of the adoption of the city council's resolution. Each aggrieved party appealing from a decision of a governing body ordering the demolition of his or her property should be allowed his or her day in court, and such an appeal should be decided on the merits, not on a hypertechnical rule of procedure. Therefore, because Johnson timely filed his notice of appeal and his affidavit of substantial hardship requesting a waiver of the bond requirement, which the circuit court ultimately approved, his appeal would have been perfected even if the bond requirement was jurisdictional rather than procedural.

Finally, even if we assume that the timely filing of a bond is a jurisdictional requirement for perfecting an appeal under § 11-53B-4 and that the timely filing of an affidavit of substantial hardship requesting the waiver of the bond requirement does not satisfy that jurisdictional requirement, under the facts and circumstances of this case, we hold that the principles of equity would require that Johnson's appeal be deemed timely. In Ex parte G.L.C., 281 So. 3d 401 (Ala. 2018), a mother, whose parental rights had been terminated, attempted to file her notice of appeal on the last day of the 14-day limitations period for filing an appeal. A courthouse security officer directed the mother to the circuit-court clerk's office, but she was then directed to the juvenile court clerk's office. Although the mother went immediately to that office, it had closed. When the mother arrived the next day to file her notice of appeal, the circuit-court clerk verified that the mother had attempted to file the notice of appeal in the juvenile-court clerk's office the day before. The circuit-court clerk concluded that, because the appeal had not been filed in a timely manner due to no fault of the mother, the appeal should be considered timely, and the clerk, therefore, backdated the appeal. The father, however, moved to dismiss the appeal, arguing that the mother

had not perfected her appeal within the 14-day limitations period. The juvenile court dismissed the mother's appeal, and the mother appealed to this court. G.L.C. v. C.E.C., 281 So. 3d 392 (Ala. Civ. App. 2018). The juvenile court, after being reinvested with jurisdiction by this court, conducted a hearing and concluded that the notice of appeal had been filed outside the 14-day limitations period. Accordingly, this court dismissed the mother's appeal.

On certiorari review, our supreme court held that principles of equity required holding that the mother's notice of appeal be deemed properly filed on the date that the mother originally appeared in the circuit-court clerk's office to file the notice of appeal, but was unable to successfully do so, and not on the next day when she was actually able to file the notice. Our supreme court explained:

"As early as 1909, this Court recognized that a filer cannot be prejudiced by the clerk's failure to 'do their part' once a document has been delivered to the clerk's office for filing. In Falley v. Falley, 163 Ala. 626, 50 So. 894 (1909), this Court stated:

"'[A] paper was filed when it was delivered to the proper official charged with the duty of filing the paper and with making the appropriate indorsement thereon. It is evident that the act of affixing the proper indorsement on the paper is a duty to be performed by the officer, and with a

failure of the officer to seasonably and properly indorse the paper the party delivering it cannot be prejudiced. He has done all that is required when he delivers the paper to the proper official.'

"163 Ala. at 628, 50 So. at 895 (emphasis added).

"The component of this case that is unique is that, although she attempted to, the mother did not actually place the notice of appeal in the physical possession of someone in the circuit clerk's office when she appeared there on August 30. See Phillips v. Beene's Adm'r, 38 Ala. 248, 252 (1862) ('[W]here the law requires or authorizes a party to file a paper, it simply means that he shall place it in his official custody. That is all that is required of him. The party cannot be prejudiced by the omission of the officer to endorse the paper filed.');

Falley, supra; and Rubin [v. Department of Industrial Relations], 469 So.2d 657 (Ala. Civ. App. 1985)]. However, the only reason the mother did not do so was because she was erroneously told that she was in the wrong division of the circuit clerk's office for filing her notice of appeal. Although the mother did not give physical possession of the notice of appeal to someone in the clerk's office for filing on August 30, we do not know what else she could have done under the circumstances. She appeared in the proper clerk's office before the office closed on the 14th day after the entry of the judgment terminating her parental rights and informed the circuit clerk's office that she needed to file a notice of appeal in a juvenile matter. It was at that point that, under the direction of someone in the circuit clerk's office, the mother left the office without placing her notice of appeal in the possession of the circuit clerk's office for filing. Under the particular facts of this case, principles of equity require that the mother's notice of appeal be deemed filed on August 30, 2017. See Sparks v. Alabama Power Co., 679 So. 2d 678, 681 (Ala. 1996)(holding, where appellant's counsel relied on erroneous information given by the Jefferson County circuit clerk's office regarding whether the appellant's postjudgment

motion had been ruled on and, in reliance on that erroneous information filed an untimely notice of appeal, that Rule 1, Ala. R. Civ. P., and Rule 1, Ala. R. App. P., required that 'every litigant must receive fair and just treatment from the court system of this State' and concluding that the appellant's untimely appeal 'must be taken as timely').

"This Court has held that '[t]he only jurisdictional prerequisite for an appeal is the timely filing of a notice of appeal.' Dunning v. New England Life Ins. Co., 890 So. 2d 92, 96 (Ala. 2003)(citing Edmondson v. Blakey, 341 So. 2d 481, 484 (Ala. 1976), and Committee Comments to Rule 3, Ala. R. App. P. ('Timely filing of the notice of appeal is a jurisdictional act. It is the only step in the appellate process which is jurisdictional.')). This Court does not wish to muddy the waters of this clear directive. However, when considering the particular circumstances of this case -- that the mother did everything she was supposed to do but was prevented from timely filing her notice of appeal based on erroneous information given to her by someone in the circuit clerk's office -- together with the fact that the mother was appealing the termination of her parental rights, we must conclude that equity requires that we deem the mother's notice of appeal timely filed."

Ex parte G.L.C., 281 So. 3d at 407-08 (footnotes omitted). In a concurring opinion, Chief Justice Stuart maintained that,

"[w]hen a party in good faith timely appears and proffers a document for filing at the wrong division of one of those circuit clerk's offices, that party's filing is timely. Such a party should, of course, be directed to the proper location to complete their filing, but barring evidence of bad faith, under no circumstances should their filing, in the event it is not completed for some reason beyond the party's control, thereafter be deemed untimely."

281 So. 3d at 409.

We read Ex parte G.L.C. to stand for the proposition that, if a party makes a bona fide attempt in good faith to timely initiate an appeal and during that process the party is prevented from doing so by an act or the inaction of an employee of the judiciary, equity requires that the appeal be considered timely. In this case, Johnson gave the circuit-court clerk his notice of appeal and an executed affidavit of substantial hardship requesting a waiver of the bond requirement within the 10-day limitations period set forth in § 11-53B-4. The circuit-court clerk accepted the notice of appeal and the affidavit of substantial hardship and docketed the appeal. At that point, Johnson had done everything within his power and means to perfect his appeal within the statutorily prescribed limitations period. A bond amount was apparently never set by the clerk, and the circuit court did not approve the waiver of the bond requirement until after the 10-day period had expired. Johnson should not be penalized because the circuit court was not able to consider the request for a waiver within the 10-day limitations period set forth in § 11-53B-4. To hold otherwise would be inequitable. The actions of the clerk and the circuit court were beyond Johnson's control. Consequently,

even if we assume that the timely filing of a bond is a jurisdictional requirement for perfecting an appeal under § 11-53B-4 and that the timely filing of an affidavit of substantial hardship does not satisfy that jurisdictional requirement, we cannot conclude that Johnson should be precluded from pursuing his appeal on the merits due to factors outside his control.

We acknowledge that the foregoing holdings rest largely upon our recognition that "[m]yriad changes have been made [throughout the years] in an attempt to eliminate, or soften the effect of, ultra technical rules of civil trial and appellate procedures thereby striving for a just, speedy and inexpensive determination of each civil action upon its merits." Hand, 425 So. 2d at 469. See also Rule 1, Ala. R. App. P. (providing that the rules of appellate procedure should be "construed so as to assure the just, speedy, and inexpensive determination of every appellate proceeding on its merits"). Nothing in this opinion eliminates the requirement in § 11-53B-4 that an aggrieved party must file a "bond for security of costs" on appeal or obtain a waiver of that bond. Rather, this opinion should be construed as stating that the filing of a "bond for security of costs" is a procedural requirement or, in the alternative, if the

timely filing of a bond is a jurisdictional requirement, the filing of the bond requirement or an affidavit of substantial hardship requesting a waiver of the bond, which is subject to the subsequent approval by the court, along with a timely filed notice of appeal, satisfies the requirements for appeal set forth in § 11-53B-4.

For the foregoing reasons, we hold that Johnson timely perfected his appeal of the city council's resolution ordering the demolition of the structure and that the circuit court erred by dismissing Johnson's appeal on the ground that it was untimely filed.

Lastly, the city argues that of Johnson's appeal to the circuit court was improper because Johnson failed to name the city, as the appellee. See note 1, *supra*, and accompanying text. The city argues, without citing any legal authority, that "the circuit court did not have jurisdiction because the City of Tuscaloosa is not a party." The City's brief at 11-12. Johnson asks this court to disregard this argument by asserting that, when jurisdiction is returned to the circuit court, he may remedy this alleged error by filing an amendment to the appeal naming the city as the appellee. See Rule 15(c), Ala. R. Civ. P. Although the city presented this argument in its motion to dismiss, the circuit court dismissed

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Johnson's appeal on the ground that it was not timely. Because nothing before us indicates that the city pursued this argument in the circuit court or that the circuit court has considered this contention, we pretermitted further discussion of this issue.

The judgment of the circuit court dismissing Johnson's appeal is reversed, and the cause is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Hanson and Fridy, JJ., concur.

Moore and Edwards, JJ., concur in the result, without opinions.