REL: February 23, 2024

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0671

Stacy Heckathorn

v.

City of Homewood, the Abatement Board of the City of Homewood, and the Homewood City Council

Appeal from Jefferson Circuit Court
(CV-23-69)

MOORE, Presiding Judge.

Stacy Heckathorn appeals from a judgment entered by the Jefferson Circuit Court ("the circuit court") dismissing her appeal from a resolution adopted by the Homewood City Council ("the city council") that ordered the demolition of a residential building owned by Heckathorn

("the building"). We reverse the circuit court's judgment and remand the case with instructions.

At some point, the Abatement Board of the City of Homewood ("the board"), an administrative board created pursuant to § 11-53A-2, Ala. Code 1975, determined that the building was "unsafe to the extent that it creates a public nuisance" and ordered that the unsafe condition be remedied or, if not remedied, that the building be demolished. After receiving a written request to review the board's decision, the city council conducted a hearing to determine whether the building should be demolished. See Ala. Code 1975, § 11-53A-3. On February 7, 2023, the city council passed a resolution declaring the building a public nuisance and ordering that the building be demolished.

Section 11-53A-3(b) provides an aggrieved party the right to appeal the decision of a city council approving the demolition of a building. Pursuant to § 11-53A-3(b),

> "[a]ny person aggrieved by the decision of the governing body at the hearing may, within 30 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 approved by the circuit clerk."

It is undisputed that Heckathorn filed a notice of appeal within 30 days of the resolution being passed by the city council on February 7 ,2023, but that she did not file a bond for security of costs approved by the circuit-court clerk.

On April 26, 2023, the City of Homewood ("the city") and the board filed a motion to dismiss the appeal, which they amended on June 14, 2023. In the motion, the city and the board argued that the circuit court lacked jurisdiction over the appeal because, they said, Heckathorn had failed to file a bond for security of costs as required by § 11-53A-3(b). On June 26, 2023, Heckathorn filed a written response to the motion to dismiss, asserting that she had perfected her appeal by timely filing a notice of appeal and by paying the appropriate filing fee. Heckathorn further contended that she had not been apprised that any bond was due and that she had understood that "there was no bond to be paid." Heckathorn requested that the circuit court find that she had "substantially complied with the [s]tatutory [r]equirements for filing [the notice of appeal]," deny the motion to dismiss, and allow the appeal to proceed on the merits.

On June 26, 2023, the circuit court conducted a hearing on the motion to dismiss. On July 6, 2023, the circuit court entered a judgment providing, in pertinent part:

> "After due consideration of the pleadings, evidentiary submissions and argument from the parties, the [c]ourt finds [Heckathorn] did NOT file a bond for security [of] costs as is required by Ala. Code [1975,] § 11-53(A)-3(b). Accordingly, [the motion to dismiss] is GRANTED. This case is DISMISSED with prejudice."

(Capitalization in original.) On July 24, 2023, Heckathorn filed a postjudgment motion to alter, amend, or vacate the judgment, alleging, among other things, that the amount of any bond for security of costs had never been established or approved by the clerk of the circuit court and that she was prepared to obtain and file the bond once the amount was established. After a hearing, the circuit court denied the postjudgment motion on August 21, 2023.

Heckathorn timely appealed the judgment to this court on September 19, 2023. Section 12-3-10, Ala. Code 1975, provides that this court shall have exclusive appellate jurisdiction over appeals "from administrative agencies." Our supreme court has construed § 12-3-10 as granting this court exclusive appellate jurisdiction over circuit-court

judgments arising from decisions of administrative agencies when the case involves "the enforcement of, or challenging [of], the rules, regulations, orders, actions, or decisions of administrative agencies." Kimberly-Clark Corp. v. Eagerton, 433 So. 2d 452, 454 (Ala. 1983). Based on the procedural history of this case, this court determines that this appeal lies within our exclusive appellate jurisdiction as described in Eagerton.

On appeal, Heckathorn, acting pro se, as she has done throughout this case, argues that the circuit court erred in dismissing her case based on the failure to file a bond for security of costs. Heckathorn maintains that no bond amount was ever established and approved by the circuit-court clerk and that the circuit court erred when it "sided on the jurisdictional requirement for a bond." Heckathorn's brief, p. 5. Heckathorn requests that this court "uphold [the appeal to the circuit court] by considering it perfected without the requirement of [an] undeterminable bond." Id. at 5-6. The city, the city council, and the board respond in their joint brief to this court that the judgment is due to be affirmed because, they say, the filing of a bond for security of costs

is a jurisdictional requirement that Heckathorn did not meet. We conclude that the dispositive issue on appeal is whether the filing of a bond for security of costs is a jurisdictional requirement, and we pretermit discussion of any other issues raised in this appeal.

In Johnson v. City of Tuscaloosa, [Ms. 2200956, Nov. 4, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022), this court considered the identical issue in an appeal arising from a resolution that was passed by the governing body of the City of Tuscaloosa condemning a building. The building owner appealed pursuant to a different statute, § 11-53B-4, Ala. Code 1975, which provides that an appeal can be taken from the resolution "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." This court determined in Johnson that the filing of a bond for security of costs is only a procedural requirement, not a jurisdictional requirement. We noted that the bond must be in a form and in an amount approved by the circuit-court clerk but that, because the statute did not provide any guidelines as to how the form and the amount of the bond would be determined and approved by the circuit-court clerk, the amount

of the bond may not be available to an appellant before the deadline for filing the appeal. This court construed § 11-53B-4 to mean that the filing of a notice of appeal alone confers jurisdiction upon the circuit court to hear an appeal taken from a demolition resolution passed by a municipality.

Section 11-53A-3(b) contains nearly the same operative language as § 11-53B-4 governing the procedure for appealing a demolition resolution passed by a municipality. The two statutes are part of a comprehensive statutory scheme regulating the demolition of unsafe structures within the borders of various Alabama municipalities. See Ala. Code 1975, § 11-53-1 et seq., § 11-53A-1 et seq., and § 11-53B-1 et seq. Section 11-53B-4 governs appeals from demolition resolutions passed by most Alabama municipalities, while § 11-53A-3(b) governs appeals from demolition resolutions passed by Class 5, 6, and 8 municipalities. Section 11-53A-3(b) applies in this case because the city is a Class 8 municipality. See Ala. Code 1975, § 11-40-12(a); Siegelman v. Folmar, 432 So. 2d 1246, 1249 (Ala. 1983) (recognizing that appellate court can take judicial notice of population and classification of a municipality).

"'Like terms in related statutes are presumed to have the same meaning, unless a different intent is manifest.' Kilgore v. Swindle, 219 Ala. 378, 380, 122 So. 333, 335 (1929)." Siegelman v. Alabama Ass'n of Sch. Bds., 819 So. 2d 568, 581 (Ala. 2001). In using nearly identical phrasing in both § 11-53A-3(b) and § 11-53B-4, we conclude that the legislature intended that the two statutes would bear the same meaning. We cannot discern any meaningful distinction between the appeal of a demolition resolution passed by a larger municipality, like the City of Tuscaloosa, and an appeal from a resolution passed by a Class 8 municipality, like the city. We recognize that § 11-53B-4 requires that an appeal be filed within 10 days from the date the demolition resolution is passed and that § 11-53A-3(b) requires that an appeal be filed within 30 days from the date the demolition resolution is passed, but we conclude that that difference does not evidence a legislative intent that the filing of a bond for security of costs shall be treated as a jurisdictional requirement under § 11-53A-3(b). We conclude that the legislature intended that the filing of a bond for security of costs would be treated as only a procedural requirement in all appeals governed by those statutes.

Thus, we hold that § 11-53A-3(b) does not require the filing of a bond for security of costs to properly invoke the appellate jurisdiction of a circuit court.

Heckathorn did not cite Johnson v. City of Tuscaloosa, supra, or flesh out her jurisdictional argument with citation to any other legal authority. The city, the city council, and the board request that this court affirm the circuit court's judgment because Heckathorn did not comply with Rule 28(a)(10), Ala. R. App. P. (requiring citation to pertinent legal authority), in crafting her legal argument. Despite any deficiency in Heckathorn's legal brief, the city, the city council, and the board were able to recognize and respond to the assertion that the circuit court had erred in dismissing the case for lack of jurisdiction. Their argument rests entirely on the premise that the requirement of filing a bond for security of costs is jurisdictional, which argument they support with citation to legal authority, the reasoning of which was ultimately rejected by this court in Johnson in this context.

> "[T]his court may choose to affirm a case on the basis of Rule 28[, Ala. R. App. P.,] when an appellant's brief fails to comply with the rule, but this court is by no means required to do so. See Kirksey v. Roberts, 613 So. 2d 352, 353 (Ala. 1993); Bishop

> v. Robinson, 516 So. 2d 723, 724 (Ala. Civ. App. 1987); and Thoman Eng'rs, Inc. v. McDonald, 57 Ala. App. 287, 289, 328 So. 2d 293, 295 (1976). The decision is a matter of discretion, and considerations other than compliance with the rule are integral to the exercise of that discretion. Among those other considerations are whether the argument 'has been raised in a manner which is fair to all concerned,' McDonald, 57 Ala. App. at 290, 328 So. 2d at 294; whether the appellee adequately responds to the issues raised by the appellant in brief despite the noncompliance, Bishop, 516 So. 2d at 724; whether the court is able to adequately discern the issues presented, Kirksey, 613 So. 2d at 353; and the emphasis placed by the Rules of Appellate Procedure on reaching the merits of our cases. McDonald, 57 Ala. App. at 289, 328 So. 2d at 295."

Dubose v. Dubose, 964 So. 2d 42, 46 n.5 (Ala. Civ. App. 2007). In light of those considerations, we decline to affirm the judgment based on any violation of Rule 28.

The circuit court erred in dismissing the case for lack of jurisdiction based on the failure of Heckathorn to file a bond for security of costs. That failure did not implicate the jurisdiction of the circuit court to hear the appeal pursuant to § 11-53A-3(b). We therefore reverse the judgment dismissing the case with prejudice, and we remand the case to the circuit court to take such further actions as are consistent with this opinion and the law in deciding Heckathorn's appeal.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Edwards, Hanson, and Fridy, JJ., concur.