

Rel: February 23, 2024

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0790

R.H.

v.

Chilton County Department of Human Resources

**Appeal from Montgomery Circuit Court
(CV-22-900367)**

FRIDY, Judge.

R.H. ("the father") appeals from a judgment of the Montgomery Circuit Court ("the circuit court") affirming the decision of the Chilton County Department of Human Resources ("DHR") finding the father "indicated" for an incident of physical abuse of his older child, B.H. ("the

child"). For the reasons set forth herein, we dismiss the appeal as untimely.

Background

On January 27, 2022, DHR sent the father a letter notifying him that, after conducting an assessment based on a report of suspected child abuse or neglect ("CA/N") that had identified him as the abuser, DHR had determined that it had "reasonable cause to believe that the report [was] 'indicated.'" In the letter, DHR explained: "An 'Indicated' finding is used when there is more credible evidence than not, based on professional judgment of the social worker, that child abuse or neglect has occurred." It advised the father that he had the right to have an independent panel of DHR employees conduct an administrative record review of the decision and that he had ten days in which to submit his written request for the review and that he could include any written information that, in his opinion, proved the "indicated" finding not to be true.

On February 3, 2022, counsel for the father hand delivered to DHR a written request for an administrative record review. In his request, the father asserted that DHR had not interviewed him as part of its

investigation into the alleged abuse and claimed that his wife, C.H. ("the mother") had made false accusations against him in an effort to alienate the child and his younger sibling, A.H. ("the younger child") from the father in connection with the mother and the father's divorce.

In a letter dated February 18, 2022, Mark Williams, an administrative CA/N record reviewer, notified the father that the requested administrative record review had been conducted and it was determined that DHR "does have enough credible evidence to support a dispositional finding of 'indicated,' i.e., true." On March 25, 2022, the father filed in the circuit court a "notice of appeal" of DHR's decision to uphold the "indicated" finding. On April 25, 2022, he filed in the circuit court a petition for judicial review of DHR's action.

On April 27, 2022, DHR filed a motion to dismiss the appeal and the petition for judicial review, arguing that the father was not within one of the enumerated categories of people entitled to a hearing after being investigated by DHR for child abuse or neglect, see § 26-14-7.1, Ala. Code 1975, and, therefore, that he was not entitled to judicial review of the DHR decision upholding the finding of "indicated." DHR did acknowledge, however, that the father could seek judicial review of the

administrative record by means of certiorari. See G.W. v. Dale Cnty. Dep't of Hum. Res., 939 So. 2d 931, 935 (Ala. Civ. App. 2006). At the hearing on DHR's motion to dismiss, the parties stipulated that the father's purported "appeal" to the circuit court should properly be treated as a petition for a common-law writ of certiorari. See Wilkinson v. Cochran, 299 So. 3d 970, 974 (Ala. Civ. App. 2020). On June 27, 2022, the circuit court entered an order stating that the father's petition for judicial review would proceed as a petition for common-law certiorari. The circuit court also granted DHR's request to strike certain documents and to seal the record.

The case proceeded in the circuit court on the parties' briefs and the administrative record. On April 19, 2023, the circuit court entered a judgment stating that, upon review of the parties' briefs and the administrative record, evidence supported DHR's finding of "indicated" against the father and affirming that decision. The father did not file a postjudgment motion before filing a notice of appeal to our supreme court, which transferred the appeal to this court on jurisdictional grounds pursuant to § 12-3-10, Ala. Code 1975.

Analysis

Although the parties did not address the issue of the timeliness of the father's filing of the notice of appeal in the circuit court, "jurisdictional matters are of such magnitude that [a court] take[s] notice of them at any time and do[es] so even ex mero motu.'" Nichols v. Ingram Plumbing, 710 So. 2d 454, 455 (Ala. Civ. App. 1998) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997)). "Timely filing of the notice of appeal is a jurisdictional act. It is the only step in the appellate process which is jurisdictional." Committee Comments to Rule 3, Ala. R. App. P.; see also Beatty v. Carmichael, 293 So. 3d 874, 877 (Ala. 2019).

Section § 41-22-20(a), Ala. Code 1975, part of the Alabama Administrative Procedure Act ("the AAPA"), provides that a person aggrieved by the final decision of an agency may seek judicial review of that decision. Section 41-22-20(b) provides, in part, that "[a]ll proceedings for review may be instituted by filing a 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."

Regarding the timing of the notice of appeal, § 41-22-20(d) provides in pertinent part:

"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."

In L.C. v. Shelby County Department of Human Resources, 293 So. 3d 912 (Ala. Civ. App. 2019), this court considered the appeal of a decision by the Alabama Department of Human Resources upholding the Shelby County Department of Human Resources' determination that the father and stepmother in that case were "indicated" for child abuse and neglect. After recognizing the failure of an aggrieved party to timely file a notice of appeal with the agency issuing a final decision has been excused when that party has filed a petition for judicial review within the time allotted for filing the notice of appeal, this court turned its attention to whether the parents had filed their petition for judicial review within the time for filing a notice of appeal. Id. at 915. We observed that the record did not disclose whether the parents had served the Shelby County Department of Human Resources within thirty days of the date they were notified of

the final decision upholding the "indicated" findings. Relying on § 41-22-20(d), we wrote that "[t]he jurisdiction of a circuit court to hear an appeal from a final decision of an administrative agency is purely statutory, and the existence of facts creating the court's jurisdiction may not be inferred, but must affirmatively appear in the record." *Id.* (emphasis added). We concluded that, because the record did not affirmatively show that the parents had filed their petition for judicial review within thirty days of their receipt of notice of the final decision, the circuit court was without jurisdiction to entertain their petition. *Id.* at 916.

In this case, the father filed a notice of appeal on March 25, 2022, thirty-five days after the February 18, 2022, letter from Williams notifying him that DHR had upheld the "indicated" finding. Our review of the record does not disclose the date on which the father received the February 18 letter, nor does it indicate the date on which DHR received the notice of appeal. Because the record in this case does not affirmatively show that the father filed his notice of appeal within thirty days of the receipt of the February 18 letter or that DHR received the notice of appeal within thirty days after the father's receipt of the decision, we must conclude that the filing of the notice of appeal was untimely. *L.C.*, 293

So. 3d at 916. Therefore, the circuit court lacked jurisdiction over the father's petition for judicial review. Id.; see also Ex parte Personnel Bd. of Jefferson Cnty., 513 So. 2d 1029, 1032 (Ala. Civ. App. 1987) (holding that the Jefferson Circuit Court never obtained jurisdiction over an untimely appeal from the administrative agency's decision.)

"A judgment entered without jurisdiction is void." Noll v. Noll, 47 So. 3d 275, 279 (Ala. Civ. App. 2010.) "An appeal will not lie from a void judgment." Harvey v. City of Oneonta, 715 So. 2d 779, 781 (Ala. 1998), Therefore, we dismiss this appeal with instructions to the circuit court to vacate its April 19, 2023, judgment.

APPEAL DISMISSED WITH INSTRUCTIONS.

Moore, P.J., and Edwards and Hanson, JJ., concur.