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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Costillo A. Johnson a/k/a Asume Bjambe Ausir Imhotep El

v.

Mary Ellis

Appeal from Montgomery Circuit Court
(CV-19-255)

SHAW, Justice.

Costillo A. Johnson, who, for purposes of this litigation, has identified himself as "Asume Bjambe Ausir Imhotep El" ("Johnson"), acting pro se, appeals from the Montgomery Circuit Court's order purporting to dismiss his

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civil action alleging claims of assault and battery and "retaliation" against "Ms. Ellis,"¹ purportedly a nurse's aid at Bibb Correctional Facility where Johnson is currently incarcerated; Wexford Medical ("Wexford"), Ellis's purported employer; and the Alabama Department of Corrections ("ADOC"). Because we conclude that the trial court lacked subject-matter jurisdiction, we vacate its judgment and dismiss the appeal.

Facts and Procedural History

On June 5, 2019, Johnson filed a pro se complaint in the trial court against Ellis, Wexford, and ADOC as a result of alleged mistreatment during a visit by Johnson to the prison infirmary on February 6, 2019, for a routinely scheduled physical examination. According to Johnson, before his actual examination, Ellis, while handing Johnson a specimen cup, "intentionally bumped into [his] upper arm shoulder area, in an insolent and vindictive manner." Johnson says that, following the completion of his examination and subsequent to leaving the infirmary, he was approached by a correctional officer who questioned him regarding allegations that he had

¹Ellis's first name is not included in Johnson's pleadings; however, elsewhere in the record, he asserts that he "believe[s] her name is Mary."

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groped Ellis during their encounter in the infirmary, allegations Johnson denied. According to Johnson, he was, as the result of Ellis's allegations, placed in disciplinary segregation during an ensuing investigation. Johnson's complaint alleged that thereafter, despite allegedly being "cleared" of any misconduct, Ellis's allegations resulted in his termination from employment at the prison law library. Based on the foregoing factual allegations, count one of Johnson's complaint alleged assault and battery against Ellis and sought to recover \$50,000 in damages.

Count two of Johnson's complaint asserted that Ellis's "false report[]" amounted to retaliation for Johnson's provision of legal assistance to another inmate who had alleged that another infirmary nurse had "molest[ed] him during a physical."² Johnson sought to recover an additional \$50,000 on this count.

Initial discovery requests and a motion to prevent his "retaliatory transfer" or other "reprisals" accompanied Johnson's complaint. At the time of filing, Johnson also

²Although not specifically referenced in Johnson's complaint, this count was presumably filed pursuant to 42 U.S.C. § 1983.

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submitted an "Affidavit of Substantial Hardship and Order," alleging that indigency prevented him from remitting the required docketing and service fees. On June 12, 2019, without either service to or a response by any named defendant, the trial court entered the following order purporting to dismiss Johnson's complaint with prejudice:

"After reviewing the documents filed by [Johnson], it appears to the Court that the ... complaint states no cognizable cause of action over which this Court has or could have jurisdiction. Therefore, it is hereby ordered that this action be dismissed, with prejudice, as this matter is frivolous and malicious. Moreover, Costillo A. Johnson (JOHNSON COSTILLA [sic] A C/O ASUME BJAMBE AUSIR IMHOTEP) has filed numerous lawsuits and most, if not all, have been dismissed as frivolous or because [Johnson] failed to state a claim upon which relief could be granted. Thus, [Johnson] is directed to seek leave of Court before filing pleadings in any new or pending lawsuit. Also, a prepayment of filing fee is also required."

(Emphasis in original.) The following day, the trial court entered a follow-up order also denying Johnson's pending motion seeking "immediate discovery."

Johnson timely filed, pursuant to Rule 59(e), Ala. R. Civ. P., a postjudgment motion seeking reconsideration of the trial court's dismissal. On the same day, Johnson also

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filed a notice of appeal to the Alabama Court of Civil Appeals; the appeal was transferred to this Court.

Standard of Review

"On appeal, a dismissal is not entitled to a presumption of correctness. Jones v. Lee County Commission, 394 So. 2d 928, 930 (Ala. 1981); Allen v. Johnny Baker Hauling, Inc., 545 So. 2d 771, 772 (Ala. Civ. App. 1989). The appropriate standard of review under Rule 12(b)(6) [, Ala. R. Civ. P.,] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [him] to relief. Raley v. Citibanc of Alabama/Andalusia, 474 So. 2d 640, 641 (Ala. 1985); Hill v. Falletta, 589 So. 2d 746 (Ala. Civ. App. 1991). In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether [he] may possibly prevail. Fontenot v. Bramlett, 470 So. 2d 669, 671 (Ala. 1985); Rice v. United Ins. Co. of America, 465 So. 2d 1100, 1101 (Ala. 1984). We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. Garrett v. Hadden, 495 So. 2d 616, 617 (Ala. 1986); Hill v. Kraft, Inc., 496 So. 2d 768, 769 (Ala. 1986)."

Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993).

Discussion

On appeal, Johnson challenges the trial court's order of dismissal on several grounds. Among those grounds, Johnson contends that the failure of the trial court to grant his

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pending affidavit of substantial hardship before entering the order of dismissal deprived the trial court of jurisdiction. We agree, and this claim is determinative.³

In identical circumstances, the Court has previously explained:

"Johnson has appealed the circuit court's judgment of dismissal, arguing, in pertinent part, that the circuit court never acquired jurisdiction over his case because he did not pay the necessary filing fee and the circuit court never approved either of the affidavits of substantial hardship he had filed. It is well established that "[t]he payment of a filing fee or the filing of a court-approved verified statement of substantial hardship is a jurisdictional prerequisite to the commencement of an action." Odom v. Odom, 89 So. 3d 121, 122 (Ala. Civ. App. 2011) (quoting Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008), citing in turn De-Gas, Inc. v. Midland Res., 470 So. 2d 1218, 1222 (Ala. 1985)). See also Ex parte Carter, 807 So. 2d 534, 536 (Ala. 2001) ('[T]he circuit court never had jurisdiction to consider Carter's Rule 32[, Ala. R. Crim. P.,] petition, because it did not collect a filing fee or approve Carter's affidavit of substantial hardship at the time the petition was filed.').

³Because of the dispositive nature of this issue, we pretermitted discussion of the remaining issues Johnson raises on appeal and also of the issue whether ADOC was properly named as a party to Johnson's action. See Favorite Market Store v. Waldrop, 924 So. 2d 719, 723 (Ala. Civ. App. 2005) (stating that this Court would pretermitted discussion of further issues in light of the dispositive nature of another issue).

"The record in this case indicates that Johnson filed two affidavits of substantial hardship -- one in May 2011 and another in December 2011. However, nothing in the record indicates that the circuit court approved either of Johnson's affidavits or that Johnson ever paid the required filing fee. ...

"Thus, for all that appears, the jurisdictional prerequisite of the payment of the filing fee or the filing of a court-approved verified statement of substantial hardship was not met in this case. We must conclude, therefore, that the circuit court did not have jurisdiction to enter its judgment dismissing Johnson's complaint; thus, that judgment is void. See Odom, supra. '[B]ecause a void judgment will not support an appeal, we vacate the trial court's judgment and dismiss the appeal.' Hunt Transition & Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 274 (Ala. 2000)."

Johnson v. Hetzel, 100 So. 3d 1056, 1057 (Ala. 2012) (footnote omitted).

Similarly, in the present case, nothing in the record establishes that Johnson paid a filing fee or that, before entering its dismissal order, the trial court granted Johnson's hardship affidavit. Therefore, the trial court never obtained jurisdiction over Johnson's complaint, and its subsequent order dismissing the action was void and will not sustain the present appeal. See id.

JUDGMENT VACATED; APPEAL DISMISSED.

Parker, C.J., and Bryan, Mendheim, and Mitchell, JJ.,
concur.