

Rel: December 18, 2020

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Eleanor Williams

v.

Mari Properties, LLC

Appeal from Jefferson Probate Court  
(No. 17BHM02189)

STEWART, Justice.

Eleanor Williams appeals from an order of the Jefferson Probate Court ("the probate court") denying her request for redemption of certain

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real property. Because we determine that the probate court lacked jurisdiction to enter the order appealed from, we dismiss the appeal.

### Facts and Procedural History

In 2003, the State of Alabama purchased property located on 45th Street North in Birmingham ("the property") at a tax sale after the then owners, Benjamin and Marzella Rosser, failed to pay ad valorem taxes. The State sold the property in 2016 for \$1,000 to Waynew Global Holdings, LLC ("WGH"). In February 2017, WGH sold the property to Mari Properties, LLC ("Mari"), for \$5,000, and Mari recorded the deed to the property.<sup>1</sup>

In September 2017, Williams filed in the probate court a petition for redemption of the property under § 40-10-120, Ala. Code 1975, with which she tendered \$1,100. Williams claimed that she inherited the property from the Rossers in or around March 2003. Williams named WGH and

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<sup>1</sup>Mari executed a promissory note and mortgage in favor of WGH in the amount of \$3,750. On January 2, 2018, WGH recorded a satisfaction of the note and release of the mortgage.

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Mari as defendants, although WGH was dismissed from the action voluntarily.

The probate court entered an order on September 10, 2019, granting Williams's petition for redemption and ordering Williams to pay \$1,100, plus interest, and any taxes paid or owing to the Jefferson County tax collector and any insurance premiums previously paid, with interest. In the order, the probate court directed Mari to compute and submit the amount of those items and stated that, upon receipt of those figures, the probate court would enter an amendment to the order and direct payment by Williams. The probate court did not vest title of the property in Williams. In addition, the probate court noted that it was retaining jurisdiction to make any other necessary orders.<sup>2</sup>

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<sup>2</sup>Based on our dismissal of the appeal, it is not necessary for us to determine whether the September 10, 2019, order was final, but see Surginer v. Roberts, 231 So. 3d 1117, 1124 (Ala. Civ. App. 2017)(explaining that a redemption order that did not "completely resolve the claims of the parties and expressly contemplated further action by the trial court" was not final (citing Ex parte Bessemer Bd. of Educ., 68 So. 3d 782, 788 n.5 (Ala. 2011)).

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On October 8, 2019, Mari filed a motion to vacate the September 10, 2019, order in which it asserted that the probate court lacked subject-matter jurisdiction over the redemption petition because, it argued, Williams was required under § 40-10-120, Ala. Code 1975, to redeem the property through statutory redemption within three years of the May 13, 2003, tax sale. Mari contended in the motion that the only redemption process available to Williams was judicial redemption under § 40-10-83, Ala. Code 1975, and that the Jefferson Circuit Court had exclusive jurisdiction over that process.

On October 9, 2019, Mari filed a notice of appeal to the Jefferson Circuit Court ("the circuit court"). On October 28, 2019, the probate court entered an order transferring the documents in the probate-court record to the circuit court. The record on appeal before this Court is devoid of any filings, orders, or other documents from the circuit court.

Despite Mari's filing of the notice of appeal to the circuit court, the parties continued filing documents in the probate court. On January 3, 2020, Williams filed in the probate court a response in opposition to Mari's motion to vacate, asserting that the probate court had jurisdiction

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concurrent with the circuit court to consider judicial redemption because, she alleged, Act No. 1144, Ala. Acts 1971, a general act of local application to Jefferson County, provides that the probate court has concurrent jurisdiction with the circuit court on matters of equity. On January 9, 2020, the probate court entered an order stating that Mari's motion to vacate had been denied by operation of law under Rule 59.1, Ala. R. Civ. P. On January 10, 2020, Mari filed a renewed motion to vacate the September 10, 2019, order, purportedly under Rule 60(b)(4), Ala. R. Civ. P., but asserted identical grounds as those contained in its previous motion to vacate. On February 6, 2020, the probate court entered an order stating:

"This matter having been previously transferred by this Court to the Circuit Court of Jefferson County, Alabama, and the matter having not been docketed in Circuit Court, the matter is hereby recalled by the Probate Court of Jefferson County, Alabama from the Circuit Court of Jefferson County, Alabama. The Circuit Court is hereby requested to transfer the file back to the Probate Court for further adjudication."

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On February 27, 2020, Williams filed a response in opposition to Mari's second motion to vacate and a motion seeking a correction of the September 10, 2019, order under Rule 60(a), Ala. R. Civ. P.

On March 6, 2020, after a hearing, the probate court entered an order purportedly vacating the September 10, 2019, order for a lack of jurisdiction, finding that Williams filed a petition for statutory redemption under § 40-10-120 but that the time had passed to redeem under that statute and that Williams should have filed in the circuit court a petition for judicial redemption under § 40-10-83. On April 6, 2020, Williams filed a notice of appeal to this Court.

### Discussion

Before this Court can consider the merits of Williams's arguments, i.e., whether her petition for statutory redemption was timely filed and whether the probate court had subject-matter jurisdiction to consider her petition as one for judicial redemption, we must first examine ex mero motu whether the order appealed from is a valid order capable of supporting an appeal. Williams has appealed from the probate court's

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March 6, 2020, order. That order was entered after Mari had filed a notice of appeal of the probate court's September 10, 2019, order to the circuit court on October 9, 2019. Although the parties neglect to address the jurisdictional implications of Mari's filing of the notice of appeal to the circuit court, "[w]e must consider, ex mero motu, questions of jurisdiction; and where a judgment appealed from is void for want of jurisdiction we have no alternative but to dismiss the appeal." City of Huntsville v. Miller, 271 Ala. 687, 689, 127 So. 2d 606, 608 (1958).

Generally, the filing of a notice of appeal from a lower court to the circuit court has jurisdictional implications -- the circuit court is conferred jurisdiction and the lower court is divested of jurisdiction to proceed with adjudication of the matter. See Harden v. Laney, 118 So. 3d 186, 187 (Ala. 2013)("The timely filing of a notice of appeal invokes the jurisdiction of an appellate court and divests the trial court of jurisdiction to act except in matters entirely collateral to the appeal."). Accordingly, when a final judgment is appealed from the probate court to the circuit court under § 12-22-20, Ala. Code 1975, the probate court is without jurisdiction to

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proceed further. This is also true even if the order that is appealed, in actuality, is a nonfinal order.<sup>3</sup> See R.H. v. J.H., 778 So. 2d 839, 841 (Ala. Civ. App. 2000)(holding that nonfinal orders entered in the juvenile court after a party filed a notice of appeal to the circuit court were nullities that would not support an appeal). See also Horton v. Horton, 822 So. 2d 431, 434 (Ala. Civ. App. 2001) (holding that a premature notice of appeal divested the trial court of jurisdiction to rule upon the remaining issues in the case until the appeal had been disposed and that, accordingly, any orders entered during that time were a nullity).

In the present case, Mari invoked the jurisdiction of the circuit court under § 12-22-20 on October 9, 2019, by filing a notice of appeal to the

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<sup>3</sup>Although the probate court's September 10, 2019, order directed Mari to compute the amount of taxes and insurance premiums and stated that it was retaining jurisdiction over the case, whether the appeal to the circuit court was from a nonfinal judgment was a question for the circuit court to resolve, and, until that resolution, the probate court was without jurisdiction to act concerning the matters appealed. See Foster v. Greer & Sons, Inc., 446 So. 2d 605, 608–09 (Ala. 1984)(explaining that, until an appellate court makes a determination regarding its own jurisdiction, the appellate court and trial court are "bound by the presumption that [the appellate court has] jurisdiction. Thames v. Gunter-Dunn, Inc., 365 So. 2d 1216 (Ala. 1979)"), overruled on other grounds by Ex parte Andrews, 520 So. 2d 507 (Ala. 1987).

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circuit court. At that point, the notice of appeal divested the probate court of jurisdiction, and, therefore, any orders entered by the probate court after that point would be void.<sup>4</sup> This includes the February 6, 2020, order in which the probate court purported to "recall" the case from the circuit court. Moreover, a probate court lacks any authority to recall or direct the transfer of a case that has been appealed to the circuit court.

We further note that, to the extent that Mari's January 10, 2020, motion to vacate the September 10, 2019, order can be construed as a motion filed under Rule 60(b)(4), Rule 60(b) provides, in pertinent part, that "[l]eave to make the motion need not be obtained from any appellate court except during such time as an appeal from the judgment is actually

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<sup>4</sup>Rule 4(a)(5), Ala. R. App. P., which provides that a notice of appeal will be held in abeyance until a postjudgment motion is ruled upon or denied by operation of law, does not apply to appeals from the probate court to the circuit court. Accordingly, a notice of appeal from the probate court to the circuit court will not be held in abeyance pending a ruling on the postjudgment motion by the lower court. Instead, the postjudgment motion is deemed withdrawn upon the filing of the notice of appeal, and jurisdiction immediately vests in the circuit court. See Veteto v. Yocum, 794 So. 2d 1117 (Ala. Civ. App. 2000). Thus, the filing of the notice of appeal on October 9, 2019, served to withdraw Mari's motion to vacate filed on October 8, 2019, and jurisdiction vested with the circuit court on October 9, 2019.

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pending before such court." (Emphasis added.)<sup>5</sup> As the Court of Civil Appeals concluded in P.I.M. v. Jefferson County Department of Human Resources, 297 So. 3d 409 (Ala. Civ. App. 2019), if a party neglects to obtain leave from the appropriate appellate court before filing a motion in the trial court pursuant to Rule 60(b), "the trial court does not acquire jurisdiction over the Rule 60(b) motion." 297 So. 3d at 411 (citing Jenkins v. Covington, 939 So. 2d 31, 34 (Ala. Civ. App. 2006)). Accordingly, even if Mari's January 10, 2020, motion was filed pursuant to Rule 60(b)(4), the probate court did not acquire jurisdiction over the motion because Mari did not seek leave of the circuit court to file the motion in the probate court. Therefore, the March 6, 2020, order appealed from is void.

### Conclusion

Based on the foregoing, the probate court's March 6, 2020, order, entered before the circuit court had disposed of Mari's appeal, was a nullity and will not support an appeal.

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<sup>5</sup>According to Rule 1, Ala. R. Civ. P., the Alabama Rules of Civil Procedure "govern the procedure ... in probate courts so far as the application is appropriate and except as otherwise provided by statute."

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APPEAL DISMISSED.

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

Sellers, J., concurs in the result.

Bolin, J., recuses himself.