

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHRISTOPHER RAHAIM,

Appellant,

v.

Case No. 5D20-2387
5D20-2393

STATE OF FLORIDA, DEPARTMENT
OF CORRECTIONS,

Appellee.

_____ /

Opinion filed July 2, 2021

Nonfinal Appeal from the Circuit Court
for Sumter County,
Mary Hatcher, Judge.

Christopher Rahaim, Wewahitchka,
pro se.

Daniel R. Burke, of Florida
Department of Corrections,
Tallahassee, for Appellee.

LAMBERT, C.J.

Christopher Rahaim, an inmate in the custody of the Florida Department of Corrections (“DOC”), appeals the nonfinal orders entered sua sponte by the trial court in two cases below that transferred venue of the

cases from the circuit court in Sumter County to the circuit court in Leon County. For the following reasons, we dismiss the appeals for lack of jurisdiction.¹

While housed in the Sumter Correctional Institution, Rahaim believed that he was being unfairly disciplined. As a result, he filed two separate, but identical, petitions for writ of mandamus in the Fifth Judicial Circuit Court for Sumter County. Rahaim requested in each case that the court compel the DOC to produce certain documents that Rahaim believed would assist him regarding claims, the substance of which is not directly relevant to our resolution here.

Prior to receiving a response from the DOC to either mandamus petition, the circuit court, without notice or hearing, entered an identical order in each case, albeit one week apart, transferring venue of both cases to the Second Judicial Circuit Court in Leon County. The court reasoned that because Rahaim was seeking records in order to challenge prison disciplinary action, “venue properly lies in Leon County, where the [DOC] is headquartered.” Rahaim separately appealed each order.

¹ We have sua sponte consolidated both appeals for purposes of this opinion.

Rahaim argues that the trial court's sua sponte orders transferring venue violated his due process rights to notice and an opportunity to be heard. In response, the DOC, while suggesting that venue in each case will ultimately properly lie in Leon County, concedes that the trial court erred in its sua sponte transfers of venue. Despite this concession, we find it necessary to dismiss these appeals for lack of jurisdiction because, as we explain, Rahaim did not timely file his notices of appeal.²

An order concerning venue, such as the ones entered here, is an appealable nonfinal order under Florida Rule of Appellate Procedure 9.130(a)(3)(A). See *Jake & the Fat Man Bike Week USA, Inc. v. Biker Design, Inc.*, 919 So. 2d 476, 476 (Fla. 5th DCA 2005). To timely invoke the jurisdiction of this court under this rule, a party must file a notice of appeal with the clerk of the lower tribunal within thirty days of the rendition of the order to be reviewed. See Fla. R. App. P. 9.130(b).³

Rahaim did not file his notice of appeal within thirty days of the order rendered in each case transferring venue. Instead, within fifteen days of

² Although the DOC has not questioned or raised this court's jurisdiction to consider these appeals, a court may sua sponte address or question its own jurisdiction to proceed. See *Gant v. Nat'l Linen*, 999 So. 2d 1079, 1080 (Fla. 1st DCA 2009) ("A court's lack of jurisdiction is an issue it may notice sua sponte.").

³ The party must also pay the applicable filing fee prescribed by law.

each order, Rahaim filed a document titled “Motion to Retain Venue by Exceptions and Quash Order to Transfer.” This motion was dismissed by the trial court in each case several months later. Rahaim then moved for rehearing, which the trial court dismissed by order. Rahaim filed his separate notices of appeal within thirty days of this last order.

We conclude that Rahaim’s Motion to Retain Venue by Exceptions and to Quash Order to Transfer essentially amounted to a motion for rehearing of the trial court’s sua sponte orders transferring venue. See *Manna Provisions Co. v. Blume*, 417 So. 2d 832, 833 (Fla. 1st DCA 1982) (treating Appellant’s “Motion to Change Order of Transfer of Venue to Denial of Motion to Transfer Venue or to Make Venue an Issue for Trial” as a motion for rehearing on the order granting the venue change). Pertinent here, a motion for rehearing of a nonfinal order concerning venue does not toll the time for taking an appeal. See *Jake & the Fat Man*, 919 So. 2d at 476.

As such, Rahaim’s Motion to Retain Venue by Exceptions and to Quash Order to Transfer did not stop or toll the thirty days Rahaim had to appeal the orders transferring venue. Accordingly, because Rahaim’s notices of appeal filed in the two cases before us were filed months after the orders transferring venue were rendered, they were untimely, resulting in this court lacking jurisdiction to consider these appeals. See *Helmich v. Wells*

Fargo Bank, N.A., 136 So. 3d 763, 764 (Fla. 1st DCA 2014) (recognizing that the requirement of the filing of a notice of appeal within thirty days is jurisdictional and that the failure to timely do so is irremediable (citing *Sims v. State*, 998 So. 2d 494, 509–11 (Fla. 2008))).

Lastly, the order dismissing Rahaim’s Motion to Retain Venue by Exceptions and Quash Order to Transfer and the subsequent order dismissing Rahaim’s motion to rehear this order are not themselves appealable orders. See *Agere Sys., Inc. v. All Am. Crating, Inc.*, 931 So. 2d 244, 245 (Fla. 5th DCA 2006) (holding that an order denying a motion for rehearing of an underlying appealable nonfinal order is not in itself an appealable order (citing *Richardson v. Watson*, 611 So. 2d 1254, 1255 (Fla. 2d DCA 1992))).

APPEAL DISMISSED.

EISNAUGLE and HARRIS, JJ., concur.