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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2007-2008

1050893

Colie E. Crutcher, Jr., M.D.

v.

Iola Williams

Appeal from Sumter Circuit Court
(CV-00-68)

COBB, Chief Justice.

The dispositive issue on this appeal is whether the order appealed from was a final judgment. We hold that it was not, and we remand the case.

Facts

On June 23, 2000, Iola Williams filed a medical-malpractice action against Colie E. Crutcher, Jr., M.D., and the City of York Healthcare Authority d/b/a Hill Hospital ("Hill Hospital"). Williams's action arose out of her visit to the Hill Hospital emergency room in June 1998, during which she was treated by Dr. Crutcher. Williams alleged against Dr. Crutcher claims of medical negligence and the tort of outrage and against Hill Hospital claims of medical negligence, the tort of outrage, negligence, and negligent hiring and supervision of Dr. Crutcher and other Hill Hospital staff.

On July 26, 2004, Hill Hospital filed the following cross-claim, seeking indemnity from Dr. Crutcher in the event it was found liable:

> "In the event Hill Hospital is found liable predicated upon the acts and/or omissions of [Dr.] Crutcher, while allegedly acting as its agent, Hill Hospital is entitled to common law indemnity for [Dr.] Crutcher's acts and/or omissions."

On September 26, 2005, the case went to trial. At the close of her case, Williams voluntarily agreed to dismiss her tort-of-outrage claim and her negligent-training-and-supervision claim to the extent it alleged negligent training and supervision of a hospital employee named Thelma Love.

Before submitting the case to the jury, the trial court dismissed all Williams's claims "except negligence." The trial court instructed the jury on Williams's medical-negligence claims against Dr. Crutcher and Hill Hospital. The trial court then gave the following instruction with regard to Hill Hospital's indemnification cross-claim:

> "Last point I want to make, you heard Mr. Chestnut [Williams's attorney] talking about a cross-claim where Hill Hospital filed a suit against Dr. Crutcher. That is in the case, but you don't need to worry about it at this point. We'll deal with that depending on your verdict. That is in the lawsuit but you don't need to worry about it at this time."

The jury returned a verdict for Williams against both Dr. Crutcher and Hill Hospital in the amount of $145,000. After the jury returned its verdict, the trial court submitted written questions to the jury to determine whether the jury found that Dr. Crutcher was acting as an agent of Hill Hospital at the time he treated Williams and, if so, whether the jury's award against Hill Hospital was based solely on the actions of Dr. Crutcher in his capacity as an agent of Hill Hospital. In response to the written questions, the jury stated that it found that Dr. Crutcher was acting as an agent, servant, or employee of Hill Hospital. The jury further stated that its verdict against Hill Hospital was "[d]ue to

Hill Hospital's own acts of negligence combined with acts of negligence of Dr. Crutcher."

On October 24, 2005, the trial court entered an order stating that "judgment is rendered" in favor of Williams on her claims against Dr. Crutcher and Hill Hospital in the amount of $145,000.[1] The trial court's order did not address Hill Hospital's indemnity cross-claim against Dr. Crutcher. Neither did it direct the entry of a final judgment as to Williams's claims against Dr. Crutcher and Hill Hospital in accordance with the provision in Rule 54(b), Ala. R. Civ. P., for certifying as final a judgment disposing of fewer than all claims in an action.

The trial court denied the postjudgment motions filed by Dr. Crutcher and Hill Hospital. On March 7, 2006, Dr.

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[1]In its entirety, the trial court's order states:

> "Pursuant to the Jury Verdict of October 11, 2005, judgment is rendered in favor of the Plaintiff Iola Williams and against the Defendants Colie E. Crutcher, Jr., M.D., and City of York Healthcare Authority/Hill Hospital in the amount of One Hundred Forty-five Thousand Dollars ($145,000) for compensatory damages.
>
> "Costs are taxed to the Defendants Colie E. Crutcher, Jr., M.D. and City of York Healthcare Authority/Hill Hospital."

Crutcher filed a notice of appeal to this Court. On March 21, 2006, Hill Hospital filed a notice of appeal to this Court. Subsequently, Williams and Hill Hospital filed a joint motion to dismiss Hill Hospital's appeal on the ground that they had reached a settlement. This Court granted the motion and dismissed Hill Hospital's appeal on July 11, 2006.

Standard of Review

This Court is not limited by the parties' jurisdictional arguments; we are obligated to look beyond those arguments and to dismiss an appeal ex meru motu if, for any reason, jurisdiction does not exist. Reynolds v. Colonial Bank, 874 So. 2d 497, 503 (Ala. 2003) ("'[I]f there is an absence of jurisdiction over the subject-matter, this ends the inquiry; it cannot be waived or supplied by consent.'" (quoting Wilkinson v. Henry, 221 Ala. 254, 256, 128 So. 362, 364 (1930) (emphasis added))); Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983)("Lack of subject matter jurisdiction may not be waived by the parties and it is the duty of an appellate court to consider lack of subject matter jurisdiction ex mero motu." (citing City of Huntsville v. Miller, 271 Ala. 687, 688, 127 So. 2d 606, 608 (1958))); Payne v. Department of Indus. Relations, 423 So. 2d 231 (Ala. Civ. App. 1982); and Bibb v.

Boyd, 417 So. 2d 206, 208 (Ala. Civ. App. 1982) ("[I]n any event, lack of jurisdiction over the subject matter is not waivable and may be raised ex mero motu by either a trial court or by an appellate court" (citing 5 Wright and Miller, Federal Practice and Procedure, Civil § 1393)). A court is obligated to vigilantly protect against deciding cases over which it has no jurisdiction because "[i]t would amount to usurpation and oppression for a court to interfere in a matter over which it has no jurisdiction, and its pronouncements in respect thereto would be without force, and its decrees and judgments would be wholly void. This is a universal principle, as old as the law itself." Wilkinson, 221 Ala. at 256, 128 So. at 364.

However, when the parties have not provided sufficient legal or factual justification for this Court's jurisdiction, this Court is not obligated to embark on its own expedition beyond the parties' arguments in pursuit of a reason to exercise jurisdiction. The burden of establishing the existence of subject-matter jurisdiction falls on the party invoking that jurisdiction. See, e.g., Ex parte HealthSouth Corp., [Ms. 1051366, Feb. 16, 2007] ____ So. 2d ____ (Ala. 2007)(setting forth the plaintiff's burden of demonstrating

standing to bring an action, an issue of subject-matter jurisdiction); Ex parte Haynes Downard Andra & Jones, LLP, 924 So. 2d 687, 691 (Ala. 2005)(stating that the party seeking a writ of mandamus bears the burden of showing that the party has properly invoked the court's jurisdiction); Ex parte Ray-El, 911 So. 2d 1100, 1104 (Ala. Crim. App. 2004) (placing the burden to "'justify the jurisdiction of this court'" on the person bringing a habeas petition as a "next friend" (quoting Whitmore v. Arkansas, 495 U.S. 149, 164 (1990))); cf. Bush v. Laggo Props., L.L.C., 784 So. 2d 1063, 1065 (Ala. Civ. App. 2000) ("Once a party challenges the trial court's jurisdiction, pursuant to Rule 12(b)(1), [Ala. R. Civ. P.,] the burden of establishing jurisdiction is on the plaintiff." (citing Menchaca v. Chrysler Credit Corp., 613 F.2d 507 (5th Cir. 1980))).

"'The question whether an order appealed from is final is jurisdictional ....'" Hinson v. Hinson, 745 So. 2d 280, 281 (Ala. Civ. App. 1999) (quoting Powell v. Powell, 718 So. 2d 80, 82 (Ala. Civ. App. 1998)). "It is a well established rule that, with limited exceptions, an appeal will lie only from a final judgment which determines the issues before the court and ascertains and declares the rights of the parties

involved." Taylor v. Taylor, 398 So. 2d 267, 269 (Ala. 1981). In the absence of subject-matter jurisdiction, this Court has no power to consider the merits of an appeal. See Ex parte V.S., 918 So. 2d 908, 912 (Ala. 2005) (quoting Flannigan v. Jordan, 871 So. 2d 767, 768 (Ala. 2003)).

Analysis

Dr. Crutcher recognizes that the judgment against him may not be a final judgment and, if it is not, that this Court should, therefore, remand the action to the Sumter Circuit Court for a determination as to whether that court chooses to certify the order as final pursuant to Rule 54(b), Ala. R. Civ. P., and then accept the appeal as filed.[2]

Williams, however, argues that the judgment in her favor is final. According to Williams, the parties stipulated at trial that Hill Hospital's cross-claim against Dr. Crutcher would survive only if the jury found Hill Hospital liable solely on the basis of Dr. Crutcher's negligence. Thus, Williams contends, the cross-claim is now moot because the

[2]The notice of appeal in this case was filed on March 7, 2006; Dr. Crutcher's appellant's brief was not filed until August 9, 2007, due in large part to the failure of the circuit clerk to timely file the record on appeal. Among the arguments he asserts in his brief on the merits is that "the judgment in this case may not be a final judgment."

jury did not find Hill Hospital liable solely on the basis of Dr. Crutcher's negligence; it found liability based on "Hill Hospital's own acts of negligence." Williams concludes that the judgment is final because "there [is] no further issue to be decided and no other verdict on which to render judgment by the Court." Williams's brief, p. 18.

Williams's failure to comply with Rule 28, Ala. R. App. P., precludes consideration of her argument that the order on appeal is a final judgment.[3] Rule 28 requires the parties to reference "the appropriate page numbers of the record on appeal." Rule 28(g). Williams's citation to the record does not direct this Court to the stipulation she describes. The record, in the context of Williams's arguments, does not contain such a stipulation. This Court will not consider evidence or stipulations that are outside the record. Etherton v. City of Homewood, 700 So. 2d 1374, 1378 (Ala. 1997).

[3]Although normally the party arguing in favor of jurisdiction is the appellant, in this case that party is Williams, the appellee. The party invoking the Court's subject-matter jurisdiction bears the burden of establishing a basis for that jurisdiction. See, e.g., Ex parte HealthSouth Corp., supra; Ex parte Haynes Downard Andra & Jones, LLP, supra; Ex parte Ray-El, supra; and Bush v. Laggo Props., L.L.C., supra.

Further, Williams cites no legal authority to support her theory that a claim terminates upon the happening of an event that causes the claim to be moot, rather than upon the entry of an order disposing of the claim. Without a record of the facts on which Williams's argument rests, and in the absence of any citation to legal authority, this Court has no practical means of considering Williams's argument. Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003)("'[I]t is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'" (quoting Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994))); cf. Stover v. Alabama Farm Bureau Ins. Co., 467 So. 2d 251, 253 (Ala. 1985) ("While we attempt to avoid dismissing appeals or affirming judgments on what may be seen as technicalities, we are sometimes unable to address the merits of an appellant's claim when the appellant fails to articulate that claim and presents no authorities in support of that claim.").

The trial court's order is not a final judgment. Because the order does not address Hill Hospital's cross-claim against Dr. Crutcher, it "adjudicates fewer than all the claims or the

rights and liabilities of fewer than all the parties." See Rule 54(b), Ala. R. Civ. P. Such an order is still subject to revision and is not final where, as here, the trial court has not directed the entry of a final judgment according to the requirements of Rule 54(b). See Kelley v. U.S.A. Oil Corp., 363 So. 2d 758, 760 (Ala. 1978) ("Because such an order is subject to revision, it is not a final judgment."); see also First Alabama Bank of Montgomery, N.A. v. Martin, 381 So. 2d 32, 33 (Ala. 1980) (defining a final judgment as "an order or decree which puts an end to all matters litigated or which ought to have been litigated with respect to a particular controversy").

As an alternative to her argument that the trial court's judgment is final, Williams asks this Court to remand the case for the trial court to amend or correct the judgment under Rule 60(a), Ala. R. Civ. P., to include a dismissal of the cross-claim. Her argument fails for lack of support. Williams cites no authority in support of her proposition that Rule 60(a) is the appropriate vehicle for resolving the jurisdictional defect in the appeal.

Moreover, Rule 60(a) "deals solely with the correction of clerical errors," not with "errors of a more substantial

nature." Rule 60, Ala. R. Civ. P., Committee Comments on 1973 Adoption. "Clerical errors" are errors "'to which the judicial sanction and discretion cannot be said reasonably to have been applied.'" Lester v. Commisky, 459 So. 2d 868, 870 (Ala. 1984)(quoting Ex parte ALK Radio Supply Co. of Georgia, 283 Ala. 630, 635, 219 So. 2d 880, 885 (1969)). In this case, determining how to adjudicate the cross-claim in light of the law, the jury's answers to interrogatories, and any stipulation by the parties requires judicial discretion. The record contains no indication that the trial court exercised that discretion. A Rule 60(a) motion "cannot be used to make [the judgment] say something other than what was originally pronounced." Ala. R. Civ. P. 60, Committee Comments on 1973 Adoption. Therefore, in this case, Rule 60(a) does not permit a remand with instructions to "correct" the judgment under Rule 60(a) by dismissing the cross-claim.

This appeal is appropriately handled under the remand process outlined in Foster v. Greer & Sons, Inc., 446 So. 2d 605, 609-10 (Ala. 1984), overruled on other grounds, Ex parte Andrews, 520 So. 2d 507, 510 (Ala. 1987):

> "When it appears from the record that the appeal was taken from an order which was not final, but which could have been made final by a Rule 54(b) certification, we will remand the case to the trial

> court for a determination as to whether it chooses to certify the order as final, pursuant to Rule 54(b), and, if it so chooses, to enter such an order ...."

Therefore, this case is remanded for the trial court either (1) to make the October 24, 2005, order a final judgment pursuant to Rule 54(b), Ala. R. Civ. P.; or (2) to adjudicate Hill Hospital's cross-claim against Dr. Crutcher. Failure to respond to the remand with fourteen (14) days will result in the dismissal of the appeal as being from a nonfinal judgment.

REMANDED.

See, Smith, and Parker, JJ., concur.

Woodall, J., concurs in the result.