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## ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2009-2010

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2070831

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Brent Andre Parris

v.

Prison Health Services, Inc., William Hobbs, and Debbie Hunt

Appeal from Limestone Circuit Court  
(CV-07-249)

On Return from Remand

PER CURIAM.

On March 13, 2009, this court remanded this cause for the trial court to take evidence and to make findings of fact regarding whether Brent Andre Parris, an inmate at Limestone Correctional Facility ("the prison"), had timely deposited his notice of appeal in the appropriate prison mail system. Pursuant to this court's directive, the trial court returned

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a detailed order containing findings of fact and conclusions of law and determining that, based on the evidence presented to the trial court, Parris had failed to establish that he had timely and procedurally complied with Rule 4(c), Ala. R. App. P. Therefore, the trial court found, Parris's appeal was untimely filed.

A full procedural history of this matter appears in Parris v. Prison Health Services, Inc., [Ms. 2070831, March 13, 2009] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2009). As to the procedural history pertinent to this matter, the record indicates that on April 7, 2008, the trial court entered an order dismissing Parris's amended complaint against defendants Prison Health Services, Inc. ("Prison Health"), Dr. William Hobbs, and Debbie Hunt (hereinafter referred to collectively as "the defendants").<sup>2</sup>

As this court stated in Parris:

"The record does not indicate that Parris filed a postjudgment motion. The case-action summary shows that on May 27, 2008, some 50 days after the trial court entered its order dismissing the amended complaint, Parris filed his notice of appeal. The

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<sup>2</sup>In that complaint, Parris alleged that the defendants had denied him medical treatment after he had injured his shoulder playing basketball.

defendants contend that Parris's notice of appeal was untimely because it was filed eight days after the expiration of the 42-day period in which Parris had to timely file the notice of appeal. See Rule 4(a)(1), Ala. R. App. P. (requiring appeals to be filed within 42 days of the entry of judgment).

"In the case of an inmate's filing a notice of appeal, the date the notice is filed in the court clerk's office is not necessarily controlling. In Houston v. Lack, 487 U.S. 266 (1988), the United States Supreme Court held that a pro se prisoner-litigant's notice of appeal was deemed filed on the day that the notice was accepted by the prison mail system and not when it arrived at the court clerk's office. The Alabama Supreme Court adopted this rule, known as the 'mailbox rule,' in Ex parte Williams, 651 So. 2d 569 (Ala. 1992), in which the court held that a pro se prisoner-litigant's petition for a writ of certiorari directed to the Alabama Court of Criminal Appeals under Rule 25, Ala. R. App. P., was timely filed on the date that the petition was delivered to the prison officials for mailing. The 'mailbox rule' governs as to the time of filing of the pro se prisoner-litigant's notice of appeal in both criminal and civil cases. See Ex parte Jones, 773 So. 2d 989 (Ala. 1998) (inmate's notice of appeal was deemed filed on the date he gave it to prison authorities for mailing); Veteto v. Yocum, 793 So. 2d 814 (Ala. Civ. App. 2001) (extending to civil cases the rule that a pro se prisoner-litigant's notice of appeal is deemed filed when that document is delivered to a prison official for mailing)."

Parris, \_\_\_ So. 3d at \_\_\_. Rule 4(c), Ala. R. App. P., provides as follows:

"If an inmate confined in an institution and proceeding pro se files a notice of appeal in either a civil or a criminal case, the notice will be

considered timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for 'legal' mail to be processed by the United States Post Office, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement that sets forth the date the filing was deposited in the institution's mail system."

The date that Parris mailed his notice of appeal to the trial court is crucial because, if the mailing was untimely, this court does not have jurisdiction to consider this appeal. "[A]n untimely filed notice of appeal results in a lack of appellate jurisdiction, which cannot be waived." Parker v. Parker, 946 So. 2d 480, 485 (Ala. Civ. App. 2006). To have timely filed his notice of appeal in this case, Parris had to have placed his notice of appeal to the Limestone Circuit Court in the prison's internal mail system by May 19, 2008. The unverified certificate of service on Parris's notice of appeal states that the notice was placed in the "U.S. Mail" on May 8, 2008. However, initially, there was no sworn evidence in the record regarding when Parris delivered his notice of appeal to the prison's mail system. Because this court was unable to determine the timeliness of Parris's mailing, the

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cause was remanded to the trial court for it to take evidence on the issue.

In its findings of fact in the order it entered on remand, the trial court stated that, according to the affidavit of Lt. John Romine, who apparently worked at the prison, "there appear[ed] to be no log or record" indicating that Parris attempted to deposit his notice of appeal within the prison mail system. In his affidavit, Lt. Romine stated that it was the prison's policy to log an inmate's "legal mail" when the inmate requested stamps for such mail, but, he said, the person who kept the log during the time in question no longer works for the Department of Corrections, and prison officials could not locate the log. The court further found that, "[a]lternatively, inmates can stamp their own legal mail using their own stamp and such mailings would not have been logged by the mailroom clerk." The trial court noted that Parris had submitted no evidence indicating that he had used that "alternative" method to mail his notice of appeal in this case. Instead, the trial court said, Parris claimed to have dropped his notice of appeal into the prison "legal mail" mailbox. However, the trial court added, Parris had also

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claimed to have submitted letters to the circuit clerk's office, and "the record is undisputed that no such letters were sent to the Clerk's office, casting doubt on Parris's testimony concerning mailings."

Kelly Sandy, a clerk in the Limestone County Circuit Clerk's office, submitted an affidavit indicating that the clerk's office did not receive letters that Parris claimed to have sent inquiring into the status of his case and informing the clerk of his desire to appeal. Sandy said that if the clerk's office had received such letters from Parris, they would have been included in the official record; the trial court stated that the letters do not appear in the record.

Moreover, although Rule 4(c) provides that "[t]imely filing may be shown by a notarized statement that sets forth the date the filing was deposited in the institution's mail system," Parris provided no such statement. The trial court concluded that, based upon the evidence before it, Parris had failed to show that he had timely and procedurally complied with Rule 4(c); thus, his notice of appeal to the Limestone Circuit Court was untimely.

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Parris appears to have failed to avail himself of the mechanism provided for in Rule 4(c)--a notarized statement setting forth the date on which the notice of appeal was placed in the prison mailing system--which would prove that his notice of appeal was timely mailed. Our review of the record indicates that no evidence was presented that would indicate that the notice of appeal was timely mailed. On the other hand, the evidence is undisputed that the notice of appeal was filed in the circuit clerk's office on May 27, 2008, more than a week after the May 19, 2008, deadline for filing a timely notice of appeal. Accordingly, based upon the record before us, we must conclude that Parris's appeal is untimely.

Because Parris's appeal is untimely, this court has no jurisdiction, and the appeal must be dismissed. Rule 2(a)(1), Ala. R. App. P.

APPEAL DISMISSED.

Thompson, P.J., and Pittman, Bryan, and Thomas, JJ., concur.

Moore, J., concurs in the result, without writing.