

Rel: April 5, 2019

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1171103

Ex parte Ralph Eustace et al.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Ralph Eustace et al.

v.

James Ray Wilbourn et al.)

(Jackson Circuit Court, CV-04-150;
Court of Civil Appeals, 2161079)

BOLIN, Justice.

1171103

Ralph Eustace, Linda Eustace, and Daryl Eustace sued James Ray ("Ray") Wilbourn and his wife Karen Wilbourn in the Jackson Circuit Court ("the trial court"), alleging a trespass to land and conversion of timber. The Wilbourns filed a counterclaim, seeking to establish title to the subject land and to recover in tort for intentional interference with a contractual relationship. The trial court entered a judgment in favor of the Eustaces on the trespass and conversion-of-timber claims and determined that the Eustaces were entitled to recover compensatory damages on those claims. The trial court also entered a judgment in favor of the Wilbourns on the claim asserting an intentional interference with a contractual relationship and determined that the Wilbourns were entitled to an award of compensatory damages on that claim.

The Court of Civil Appeals affirmed the judgment of the trial court, without an opinion. Eustace v. Wilbourn (No. 2161079, July 13, 2018), ___ So. 3d ___ (Ala. Civ. App. 2018) (table). The Eustaces petitioned this Court for a writ of certiorari, asserting that the Court of Civil Appeals' decision affirming the trial court's judgment on the Wilbourns' claim of tortious interference with a contractual

1171103

relationship was in conflict with this Court's decision in Merchants National Bank of Mobile v. Steiner, 404 So. 2d 14 (Ala. 1981). We granted the petition and, upon review, determine that the Court of Civil Appeals lacked jurisdiction over the case, because the appeal was taken from a nonfinal judgment.

Factual and Procedural History

In 2002, the Wilbourns purchased approximately 300 acres of land from Ollie Fowler. Before the Wilbourns purchased the property, Fowler had showed the Wilbourns what Fowler thought were the boundary lines of the property. The land purchased by the Wilbourns adjoined land owned by Ralph Eustace. Ralph Eustace had lived on his property for 82 years, excepting the time he spent in the military.

In 2004, the Wilbourns entered into an auction contract with Fowler Auction and Real Estate Service, Inc. ("Fowler Auction Company"), pursuant to which Fowler Auction Company agreed to auction the Wilbourns' property for a fee of \$14,000. Before the property was auctioned, the Wilbourns had the timber on their property cut. Ray Wilbourn testified that he told the loggers to stay 150 feet away from what he thought

1171103

was the property line between his property and the Eustaces' property. While Wilbourn was having the timber cut from his property, he also had a surveyor on the property surveying it for the upcoming auction. Ray Wilbourn testified that one evening the surveyor informed him that Ray Wilbourn had a "problem," because Wilbourn had cut timber on land owned by Ralph Eustace. Wilbourn immediately ceased cutting timber that evening and contacted Ralph Eustace the following morning to explain that his crew had cut a significant amount of timber on Ralph Eustace's side of the property line. In order to survey the area together, Ray Wilbourn testified that he and Ralph Eustace rode to the area where the timber had been cut. After learning of the error, Ray Wilbourn did not cut any additional timber on Ralph Eustace's property.

Ralph Eustace testified that approximately \$40,000 worth of timber had been mistakenly cut from his property. The Eustaces presented testimony from a certified forester that indicated that the value of the timber removed from the property was approximately \$35,810. Ralph Eustace further testified that his property was valued at approximately \$97,000 before the timber was cut from the property and that

1171103

the property was valued at approximately \$48,000 after the timber had been removed from his property.

On April 13, 2004, Ray Wilbourn entered into an auction sales contract with Morris Sherlis for the sale of his approximately 300 acres of land. The closing on the sale was set for May 13, 2004. Before closing, Ray Wilbourn and Sherlis had agreed that the Wilbourns would "clean up the roads ... and put in some gates" on the property. Ralph Eustace testified that, in the process of selling the property, the Wilbourns restricted the access to his property by rerouting a road, pushing up a berm, and erecting a gate. Ralph Eustace testified that it would cost approximately \$2,500 to remediate the road allowing access to the Eustaces' property.

On May 13, 2004, the date the Wilbourns and Sherlis were scheduled to close on the sale of the Wilbourns' land, the Eustaces sued the Wilbourns, alleging a trespass to their property and conversion of timber. The Eustaces also sought a declaration of the parties' respective rights as to a right-of-way that traversed the Wilbourns' property to the Eustaces' property. On that same date, the Eustaces also filed a lis

1171103

pendens notice in the Jackson Probate Court pursuant to § 35-4-131(a), Ala. Code 1975. The lis pendens notice described only that portion of the Eustaces' property from which Ray Wilbourn had cut the timber. Ray Wilbourn testified that he received a telephone call from the closing attorney on the day of closing, notifying him that the closing could not proceed because of the lis pendens notice filed by the Eustaces. Subsequently, Sherlis backed out of the purchase of the Wilbourns' property. The Wilbourns eventually sold the property to a second purchaser for the same sale price they had contracted with Sherlis for the purchase of the property. However, Ray Wilbourn testified that the canceled sale of the property caused him to incur additional expenses related to the sale of the property to a second purchaser.

On July 16, 2004, the Wilbourns filed a counterclaim against the Eustaces, asserting a claim of intentional interference with a contractual relationship. The Wilbourns alleged that the Eustaces refused to acknowledge to the closing attorney that no property outside the land specifically described in the lis pendens notice was subject to the notice. In other words, the Wilbourns claimed that the

1171103

Eustaces "weaponized" the lis pendens notice by allowing the closing attorney to believe and/or to be convinced that the Wilbourns' property as a whole was subject to the lis pendens notice, rather than just the portion of the Eustaces' property described in the lis pendens notice.

Following an ore tenus proceeding, the trial court, on May 5, 2017, entered the following order, which states, in relevant part:

"The Court finds that [the Eustaces are] entitled to an award of compensatory damages for [the Wilbourns'] trespass upon the property owned by [the Eustaces] and the cutting and selling of timber thereon without [the Eustaces'] permission.

"The Court further finds that [the Eustaces are] entitled to an award of compensatory damages for the conversion of the timber cut and sold by [the Wilbourns] on [the Eustaces'] property.

". . . .

"The Court further finds that [the Eustaces] did intentionally interfere with the contractual relations of [the Wilbourns] by filing a lis pendens notice in the Office of the Judge of Probate, Jackson County Alabama, thereby interfering with [the Wilbourns'] sale of the property to third-party purchasers. [The Wilbourns are] therefore entitled to damages from [the Eustaces] associated with the harm caused by said intentional conduct.

"The Court finds that any damages awarded to [the Eustaces] from [the Wilbourns] herein and any damages awarded to [the Wilbourns] from [the

1171103

Eustaces] herein are hereby offset against the other."

Discussion

This Court addresses ex mero motu the lack of appellate jurisdiction when an appeal is taken from a nonfinal judgment. Beam v. Taylor, 149 So. 3d 571 (Ala. 2014); Powell v. Republic Nat'l Life Ins. Co., 293 Ala. 101, 300 So. 2d 359 (1974). In Ford Motor Co. v. Tunnell, 641 So. 2d 1238, 1240 (Ala. 1994), this Court stated the following regarding the finality of judgments:

"This Court has defined a final judgment as 'a terminative decision by a court of competent jurisdiction which demonstrates there has been a complete adjudication of all matters in controversy between the litigants within the cognizance of that Court. That is, it must be conclusive and certain in itself.' Jewell v. Jackson & Whitsitt Cotton Co., 331 So. 2d 623, 625 (Ala. 1976). Further, we had stated: 'All matters should be decided; damages should be assessed with specificity leaving the parties with nothing to determine on their own.' Jewell, 331 So. 2d at 625."

"'A judgment for damages to be final must ... be for a sum certain determinable without resort to extraneous facts.'" Moody v. State ex rel. Payne, 351 So. 2d 547, 551 (Ala. 1977) (quoting Jewell v. Jackson & Whitsitt Cotton Co., 331 So. 2d 623, 625 (Ala. 1976)). "That a judgment is not final when the

1171103

amount of damages has not been fixed by it is unquestionable."

"Automatic" Sprinkler Corp. of America v. B.F. Goodrich Co.,

351 So. 2d 555, 557 (Ala. 1977).

Here, the trial court determined that all parties were entitled to compensatory damages and purportedly awarded said damages without determining with specificity the amount of compensatory damages to which each party was entitled. Although the trial court did offset the damages awards, doing so did not remedy the defect inherent in the judgment by the trial court's failure to assess with specificity the amount of damages to which each party was entitled. The finality of the judgment is merely illusory, because it is conditioned upon the judgment in favor of the Wilbourns on the intentional interference with a contractual relationship claim being affirmed on appeal. Should the judgment on that claim be reversed on appeal, the basis for the offset of the compensatory-damages awards is removed, and the case must then be remanded to the trial court for a determination of the damages to which the Eustaces are entitled on the judgment in their favor on the trespass and conversion claims. In that

1171103

case, there would not have been a "complete adjudication of all matters" between the parties. Tunnell, 641 So. 2d at 1238.

Accordingly, we conclude that the Court of Civil Appeals lacked jurisdiction over this case, because the judgment from which it was taken was not a final judgment. Therefore, we reverse the judgment of the Court of Civil Appeals and remand the case to that court with instructions to dismiss the appeal as being from a nonfinal judgment.

REVERSED AND REMANDED.

Parker, C.J., and Wise, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Shaw and Bryan, JJ., concur in the result.