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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Secretary of the Alabama Law Enforcement Agency

v.

Randol R. Ellis

Appeal from Wilcox Circuit Court
(CV-13-900085)

MOORE, Judge.

The Alabama Law Enforcement Agency ("ALEA"), by and through its secretary, currently Hal Taylor, appeals from a judgment of the Wilcox Circuit Court ("the circuit court") directing the Alabama Department of Public Safety ("DPS"),

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which is, by statute, now a component of ALEA (see Ala. Code 1975, § 41-27-1), to reinstate the "regular" Class D driver's license¹ and the commercial driver's license ("CDL") of Randol R. Ellis. We dismiss the appeal based on the circuit court's lack of subject-matter jurisdiction.

Procedural History

On November 4, 2013, Ellis filed a notice of appeal to the circuit court from a decision of DPS that upheld the suspension of Ellis's driver's license and his CDL following his September 28, 2013, arrest for driving under the influence. (C. 6). On that same date, Ellis filed a motion requesting a stay of any action by DPS to enforce the suspension. The circuit court entered an order on November 7, 2013, staying the suspension of Ellis's driver's license and his CDL. On January 12, 2014, the director of DPS filed an answer to Ellis's notice of appeal and a motion to lift the stay of the suspension of Ellis's driver's license and his CDL; in that filing, the director of DPS noted, among other things, that Ellis's driver's license and his CDL had been

¹We take judicial notice of the fact that a "Class D" driver's license is intended for operating noncommercial vehicles, whereas a CDL allows drivers to operate commercial vehicles.

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suspended, that the actions taken by DPS had been mandatory, that Ellis's appeal failed to state grounds upon which the circuit court could assume jurisdiction of the appeal or for which relief could be granted, and he sought dismissal of Ellis's appeal.

Beginning April 14, 2014, Ellis filed a number of motions to continue, asserting that the outcome of his driving-under-the-influence case would have a direct bearing on the civil action and, later, that he had entered a pretrial-diversion program in the driving-under-the-influence case and that he had not yet completed that program. On October 29, 2015, Ellis filed a motion to continue, requesting that the circuit court allow for the disposition of the driving-under-the-influence case to be received by DPS and for negotiations between the parties to take place in the present case.

On January 24, 2018, the circuit court entered an order dismissing the case based on Ellis's failure to appear at a scheduled court date. The circuit court entered an order on February 21, 2018, setting aside its order dismissing the case, reinstating the case, and setting the case for a trial on April 3, 2018. Ellis filed a notice with the circuit court

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on April 2, 2018, indicating that he had "successfully completed all requirements" for the driving-under-the-influence case, that "[a]ll fees ha[d] been paid in full," and that his "[driver's] license ha[d] been reinstated." On that same date, the circuit court entered an order granting what it referred to as Ellis's motion to dismiss. On May 15, 2018, Ellis filed a motion to reinstate his CDL; the circuit court entered an order granting that motion on May 15, 2018.

On June 14, 2018, ALEA, through its secretary, filed a postjudgment motion, asserting, among other things, that, on September 28, 2013, Ellis had been the driver of a motor vehicle that had been involved in a traffic accident; that Ellis had subsequently been arrested for driving under the influence of alcohol in violation of § 32-5A-191, Ala. Code 1975; that Ellis had submitted to a chemical breath analysis that showed he had a blood-alcohol content of .08% or more; that ALEA had received a sworn report from the arresting law-enforcement officer that Ellis had been in actual physical control of a motor vehicle with a blood-alcohol content of .08% or more; that, upon receipt of that report, ALEA was required to suspend Ellis's "Class D" driver's licence for a

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period of 90 days and his CDL for life; that Ellis had requested an administrative review of the intended suspension of both his driver's license and his CDL, pursuant to § 32-5A-306, Ala. Code 1975; and that ALEA had determined that all statutory requirements had been met to sustain and uphold the suspension. ALEA asserted that, pursuant to §§ 32-6-49.3(7), 32-6-49.11(a), 32-6-49.11(b), 32-6-49.23, and 32-5A-304(c), Ala. Code 1975, Ellis was prohibited from being eligible to enter a pretrial-diversion program relative to his CDL and that, because Ellis had had a previous "conviction" for driving under the influence or "refusal,"² Ellis's CDL was due to remain suspended. The circuit court set ALEA's motion for a hearing on August 3, 2018. No transcript of that hearing appears in the record, and the circuit court failed to enter an order on ALEA's postjudgment motion. Accordingly, ALEA's postjudgment motion was denied by operation of law on September 12, 2018. See Rule 59.1, Ala. Civ. App. P. ALEA

²The reference to a "refusal" corresponds with § 32-5A-304(b)(5), Ala. Code 1975, which indicates that "alcohol or drug-related enforcement contacts" include, among other things, "any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law."

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filed its notice of appeal to this court on September 26, 2018.

Analysis

ALEA first argues on appeal that the circuit court lacked subject-matter jurisdiction to consider Ellis's request for judicial review. Although ALEA failed to make this argument before the circuit court at any time,

"[i]t is well settled that 'subject-matter jurisdiction may not be waived; a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu.' C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003); see, e.g., Ex parte Norfolk S. Ry. Co., 816 So. 2d 469, 472 (Ala. 2001) ('We are obliged to recognize an absence of subject-matter jurisdiction obvious from a record, petition, or exhibits to a petition before us.'). A judgment entered by a court that lacks subject-matter jurisdiction is void. See C.J.L., 868 So. 2d at 454; see also J.B. v. A.B., 888 So. 2d 528 (Ala. Civ. App. 2004)."

S.B.U. v. D.G.B., 913 So. 2d 452, 455 (Ala. Civ. App. 2005).

Citing §§ 32-5A-306 and 32-5A-307, Ala. Code 1975, of the Alabama Rules of the Road Act ("the Act"), § 32-5A-1 et seq., Ala. Code 1975, ALEA asserts that the circuit court did not have subject-matter jurisdiction to consider Ellis's appeal from DPS's decision upholding the suspension of Ellis's

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driver's license or his CDL. Section 32-5A-306 provides, in pertinent part:

"(a) Any person who has received a notice of suspension or a notice of intended suspension under this article may request an administrative review. The request may be accompanied by a sworn statement or statements and any other relevant evidence which the person wants the director [of DPS], or his or her agent, to consider in reviewing the determination made pursuant to Sections 32-5A-300 and 32-5A-302[, Ala. Code 1975].

"(b) When a request for an administrative review is made, the director, or his or her agent, shall review the determination made pursuant to Sections 32-5A-300 and 32-5A-302. In the review, the director, or his or her agent, shall give consideration to any relevant sworn statement or other evidence accompanying the request for the review, and to the sworn statement of the law enforcement officer required by Section 32-5A-301[, Ala. Code 1975]. If the director, or his or her agent, determines, by a preponderance of the evidence, that the person drove or was in actual physical control of a motor vehicle with 0.08 percent or more by weight of alcohol in the blood, or the person refused the test, the director, or his or her agent, shall sustain the order of suspension or suspend the driver license or driving privilege of the person if no order of suspension has been issued. If the evidence does not support such a determination, the director, or his or her agent, shall rescind the order of suspension or take no suspension action if an order of suspension has not been issued. The determination by the director, or his or her agent, upon administrative review is final unless a hearing is requested under Section 32-5A-307[, Ala. Code 1975]."

Section 32-5A-307 provides, in pertinent part:

"(a) Any person who has received a notice of intended suspension pursuant to Section 32-5A-303 or a notice of suspension pursuant to Section 32-5A-302 where no notice of intended suspension was served may request an administrative hearing. A request for an administrative hearing shall be in writing and shall be hand delivered or mailed to the Alabama Department of Public Safety, Driver License Division, in Montgomery, Alabama. The request shall be received by the department or be mailed and postmarked within 10 days of the notice of intended suspension issued pursuant to Section 32-5A-303 or the notice of suspension issued pursuant to Section 32-5A-302 where no notice of intended suspension was served. Failure to request an administrative hearing within 10 days shall constitute a waiver of the person's right to an administrative hearing and judicial review under this article. ..."

In Alabama Law Enforcement Agency v. Carter, [Ms. 2160820, April 27, 2018] ___ So. 3d ___ (Ala. Civ. App. 2018), this court considered a case with similar circumstances as those presented in the present case. In Carter, the CDL of Gregory Vincent Carter, Jr., had been suspended and Carter requested an administrative review of the intended suspension before appealing to the Clay Circuit Court upon his suspension being upheld. ___ So. 3d at ___. Like in the present case, ALEA argued in Carter, for the first time on appeal, that, because Carter had requested an administrative review, rather than an administrative hearing, when he received notice regarding the suspension of his CDL, he was not entitled to a

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judicial review of the hearing officer's decision to uphold the suspension. ___ So. 3d at ___. This court cited §§ 32-5A-306 and 32-5A-307 and noted that the Act "does not contain a mechanism by which judicial review may be sought after an adverse ruling from an administrative review." ___ So. 3d at ___. We noted also that Carter did not dispute that he had requested an administrative review rather than an administrative hearing and that the evidentiary filings in that case indicated that an administrative review, and not an administrative hearing, had been conducted. ___ So. 3d at ___. Accordingly, this court concluded that, based on the applicable statutes and the circumstances in that case, the Clay Circuit Court did not have subject-matter jurisdiction to hear Carter's appeal, ___ So. 3d at ___, and we, thus, dismissed ALEA's appeal to this court as being from a void judgment. Id.

In the present case, unlike in Carter, there are no evidentiary records from the decisions made by ALEA or DPS with regard to Ellis's requested review of his suspension before appealing to the circuit court. Although Ellis stated in his November 4, 2013, notice of appeal to the circuit court

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that he "filed his request for a review" and referred to DPS's ruling pursuant to that "review," the use of those terms does not rule out the possibility that Ellis sought a review by means of an administrative hearing, pursuant to § 32-5A-307. Unlike in Carter, in which Carter did not dispute that he had requested an administrative review, rather than an administrative hearing, Ellis argues on appeal in the present case that the record before this court does not reveal any evidentiary submissions speaking to which method of review was sought by Ellis before appealing to the circuit court. Ellis points out, and we agree, that without any indication in the record regarding the manner of review that was sought by Ellis before ALEA and DPS, this court cannot discern whether the circuit court obtained subject-matter jurisdiction over Ellis's request for judicial review.

Ellis urges this court to affirm the circuit court's judgment based on the lack of evidence in the record to support ALEA's assertion on appeal that the circuit court lacked subject-matter jurisdiction. We note, however, that appeals from decisions of administrative agencies, including Ellis's appeal to the circuit court in the present case, are

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statutory. Eitzen v. Medical Licensure Comm'n of Alabama, 709 So. 2d 1239, 1240 (Ala. Civ. App. 1998). In Patterson v. Downs, 255 Ala. 197, 199, 50 So. 2d 408, 410 (1951), our supreme court distinguished between a jurisdictional attack on a court of general jurisdiction and a jurisdictional attack on a court of limited and statutory jurisdiction:

"[W]here a court of general jurisdiction has exercised its powers, it will be presumed, unless the contrary appears of record, that all the facts necessary to give the court jurisdiction were duly found and every step taken. Silence of the records of the court is not sufficient to create a presumption of lack of jurisdiction. It is only where the face of the record shows a want of jurisdiction that its proceedings will be declared void on collateral attack. Blount County Bank v. Barnes, 218 Ala. 230, 118 So. 460 [(1928)]; White v. Simpson et al., 124 Ala. 238, 27 So. 297 [(1900)]. But if the court is of limited jurisdiction, its jurisdiction being statutory, the requirements of the statute must be strictly complied with, which must affirmatively appear from the record. Fowler v. Fowler, 219 Ala. 453, 122 So. 440 [(1929)]; Wiley v. State, 117 Ala. 158, 23 So. 690 [(1898)]; Chamblee v. Cole, 128 Ala. 649, 30 So. 630 [(1901)]."

In Alabama Public Service Commission v. McGill, 260 Ala. 361, 362, 71 So. 2d 12, 14 (1954), our supreme court observed, in pertinent part:

"The circuit court sitting as a court of review in the exercise of its special statutory and limited jurisdiction was without jurisdiction unless the record showed on its face that the case is one where

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that court has authority to act. Jurisdiction in such a case is never presumed and, if it does not appear, the judgment or decree is void."

As discussed above, the record in this matter does not contain the evidence necessary to confer jurisdiction on the circuit court pursuant to § 32-5A-307(a). Because the face of the record is silent as to all essential jurisdictional facts and we cannot presume jurisdiction because the circuit court was acting as a court of limited, or statutory, jurisdiction, the circuit court's order directing that Ellis's CDL be reinstated is void. "A void judgment will not support an appeal and 'an appellate court must dismiss an attempted appeal from such a void judgment.'" Colburn v. Colburn, 14 So. 3d 176, 179 (Ala. Civ. App. 2009) (quoting Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008)). Accordingly, we dismiss ALEA's appeal, albeit with instructions to the circuit court to vacate all orders entered after its dismissal of Ellis's appeal.

APPEAL DISMISSED WITH INSTRUCTIONS.

Thompson, P.J., and Donaldson and Hanson, JJ., concur.

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