REL: October 18, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180220

SAI Montgomery BCH, LLC, d/b/a Classic Cadillac, and Andrew Harper

v.

Donald Williams and Mary E. Williams

Appeal from Montgomery Circuit Court
(CV-18-900898)

STEWART, Justice.

SAI Montgomery BCH, LLC, d/b/a Classic Cadillac ("Cadillac"), and Andrew Harper, general manager for Cadillac (hereinafter referred to collectively as "the Cadillac

defendants"), appeal from an order of the Montgomery Circuit Court ("the trial court") denying their motions to compel arbitration. Because we conclude that the trial court was without jurisdiction to enter the order appealed from, we dismiss the appeal.

Facts and Procedural History

In December 2016, Mary E. Williams leased and took possession of a 2017 Cadillac XT5 automobile ("the XT5") from Cadillac. Cadillac required Donald Williams, Mary's husband, to cosign and provide his financial information as a prerequisite to approving financing for the XT5. Donald and Mary both executed the lease agreement, which contained an arbitration agreement. In mid-January 2017, Cadillac contacted Donald requesting additional financial information, which Donald provided. The day after Donald provided the requested information, Cadillac left a message for Mary to return to Cadillac's dealership with the XT5 on January 23, 2017. The Williamses did not go to Cadillac's dealership as requested and did not have any further contact directly with Cadillac. The Williamses had submitted two lease payments. On January 26, 2017, Mary was contacted by a private investigator working

for Cadillac who was attempting to locate the XT5. On January 27, 2017, Mary filed a consumer complaint against Cadillac with the State of Alabama's Attorney General's Office. On January 30, 2017, the Williamses complied with a request from local law enforcement to come to the police station. The Williamses provided copies of the bill of sale, tag receipt, and leasing information for the XT5. The following day, law enforcement seized the XT5. On February 1, 2017, the Williamses arranged a meeting with law enforcement, but both Donald and Mary were arrested for theft of property when they arrived at the police station. A grand jury ultimately refused to return an indictment on the charges.

On May 15, 2018, the Williamses sued the Cadillac defendants and fictitiously named defendants, asserting against the Cadillac defendants claims of malicious prosecution, slander, defamation, abuse of process, and conversion and against Cadillac wanton hiring, training, and/or supervision. On June 15, 2018, Cadillac filed a motion seeking to compel arbitration and to stay the trial-court proceedings, supported with an affidavit from Harper. On July 2, 2018, Harper, after being served, likewise filed a motion

seeking to compel arbitration and to stay the trial-court proceedings, expressly adopting and incorporating Cadillac's previously filed motion. On July 5, 2018, the trial court entered an order granting Cadillac's motion to compel arbitration and to stay the proceedings.

On July 17, 2018, the Williamses filed a motion seeking to vacate the July 5, 2018, order compelling arbitration. In their motion, the Williamses identified the motion as being filed pursuant to Rule 60(b)(6), Ala. R. Civ. P., and complained that they had not been notified that the case had been reassigned to another judge.[1] On October 11, 2018, the trial court entered an order setting an October 30 hearing on all pending motions. On October 23, 2018, the Williamses filed a response in opposition to the Cadillac defendants' motions to compel arbitration. The Cadillac defendants filed a reply in which they asserted, among other things, that the Williamses' July 17 motion had been denied by operation of law

[1]The case-action-summary sheet indicates that the case was initially assigned to Judge Roman Shaul, who in June 2018 left the bench to become General Counsel for the Alabama State Bar Association. The order granting Cadillac's motion to compel arbitration was entered by the presiding circuit judge, Johnny Hardwick. On October 4, 2018, the case was reassigned to Judge Jimmy Pool.

pursuant to Rule 59.1, Ala. R. Civ. P., and that the trial court was without jurisdiction to rule on the Williamses' postjudgment motion.

On November 13, 2018, the trial court entered an order purporting to deny the Cadillac defendants' motions to compel arbitration. On December 6, 2018, the Cadillac defendants timely filed a notice of appeal to this Court.

Discussion

The Cadillac defendants appeal from the November 13, 2018, order purporting to deny their motions to compel arbitration. See Rule 4(d), Ala. R. App. P. ("An order granting or denying a motion to compel arbitration is appealable as a matter of right ...."). See also Bowater, Inc. v. Zager, 901 So. 2d 658, 667 (Ala. 2004). As a threshold matter, however, we must first determine whether the trial court had jurisdiction to enter the order from which the Cadillac defendants have appealed because "a void order or judgment will not support an appeal." Gallagher Bassett Servs., Inc. v. Phillips, 991 So. 2d 697, 701 (Ala. 2008).[2]

[2]We recognize that this Court has held that a mandamus petition is the proper method for review of a trial court's order entered after a postjudgment motion has been denied by operation of law. See Ex parte Chmielewski, [Ms. 1171089, Dec.

The Cadillac defendants argue that the Williamses' July 17, 2018, postjudgment motion was actually filed pursuant to Rule 59, Ala. R. Civ. P., not Rule 60(b), and, thus, that the 90-day time limitation imposed by Rule 59.1 operated to deny the Williamses' motion by operation of law on October 15, 2018. As a result, the Cadillac defendants assert, the trial court was without jurisdiction to enter the order on November 13, 2018, purporting to deny the Cadillac defendants' motions to compel arbitration.

The Williamses argue that their motion was filed pursuant to Rule 60(b)(6) and, that, therefore, it was not subject to denial by operation of law under Rule 59.1.[3] Rule 59(e) permits a party to file a motion to alter, amend, or vacate a judgment within 30 days of the entry of the judgment. It is well settled that this Court looks to the essence of a motion

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21, 2018] ___ So. 3d ___, ___ (Ala. 2018). This appeal, however, concerns an order purportedly denying motions to compel arbitration, which is properly reviewable by appeal, see Bowater, 901 So. 2d at 667.

[3]The Williamses further assert that, because review of the grant of a Rule 60(b) motion is by a petition for a writ of mandamus, the Cadillac defendants are precluded from raising their arguments on appeal. The Cadillac defendants, however, are appealing from an order purporting to deny their motions to compel arbitration -- not from an order purporting to grant a Rule 60(b) motion.

and not to its title to determine how the motion is to be considered under the Alabama Rules of Civil Procedure. Ex parte Johnson, 715 So. 2d 783, 785-86 (Ala. 1998). This Court has held on several occasions that a motion filed within 30 days of the entry of a judgment seeking relief that is available under Rule 59(e) should be treated as a Rule 59(e) motion to alter, amend, or vacate the judgment, regardless of how the motion is denominated. Id. See Ex parte Alfa Mut. Gen. Ins. Co., 684 So. 2d 1281 (Ala. 1996); Sexton v. Prisock, 495 So. 2d 581 (Ala. 1986); Holt v. First Nat'l Bank of Mobile, 372 So. 2d 3 (Ala. 1979). Further this Court has repeatedly construed a "motion to reconsider" a judgment, when it has been filed within 30 days after the entry of a final judgment, as a Rule 59(e) motion. Evans v. Waddell, 689 So. 2d 23 (Ala. 1997). A Rule 60(b) motion to set aside a judgment cannot be substituted for a Rule 59 motion so as to avoid the operation of Rule 59.1. See Matkin v. Smith, 531 So. 2d 876 (Ala. 1988); Ingram v. Pollock, 557 So. 2d 1199 (Ala. 1989).

Rule 60(b)(6) permits a trial court to relieve a party from a judgment for "any other reason justifying relief from the operation of the judgment."

> "The 'catch all' provision of clause (6) of Rule 60(b) allows a trial court to grant relief from a judgment for 'any other reason justifying relief.' Barnett v. Ivey, 559 So. 2d 1082, 1084 (Ala. 1990). '"Relief under Rule 60(b)(6) is reserved for extraordinary circumstances, and is available only in cases of extreme hardship or injustice."' Chambers County Comm'rs v. Walker, 459 So. 2d 861, 866 (Ala. 1984) (quoting Douglass v. Capital City Church of the Nazarene, 443 So. 2d 917, 920 (Ala. 1983))."

R.E. Grills, Inc. v. Davison, 641 So. 2d 225, 229 (Ala. 1994).

This Court has further explained:

> "[U]nder Rule 60(b)(6), relief is granted only in those extraordinary and compelling circumstances when the party can show the court sufficient equitable grounds to entitle him to relief, but relief should not be granted to a party who has failed to do everything reasonably within his power to achieve a favorable result before the judgment becomes final; otherwise, a motion for such relief from a final judgment would likely become a mere substitute for appeal and would subvert the principle of finality of judgments."

Patterson v. Hays, 623 So. 2d 1142, 1145 (Ala. 1993).

The Williamses argue on appeal that their motion "centered on the manifest injustice resulting from the grant of a dispositive motion without giving the non-moving party an opportunity to be heard on the motion," which, they assert, "falls squarely within the parameters of Rule 60(b)." (Williamses' brief at 25-26.)

The Williamses' postjudgment motion asserted as grounds for relief that they had not received notice that the case had been reassigned to another judge, that they did not know the trial court was going to rule on the motion to compel, that they were waiting for the trial court to set a date for them to respond to the motion, and that they had meritorious arguments, and they requested an opportunity to file a response in opposition to the motions to compel arbitration. The Williamses never alleged that they did not have notice of the motions or otherwise allege the existence of a manifest injustice. Their assertions amount to a request for the trial court to vacate the order compelling arbitration because the trial court entered the order while they were waiting for the trial court to give them a deadline by which to respond to the Cadillac defendants' motions to compel arbitration.[4] The Williamses did not allege any facts to support the "extraordinary relief" envisioned by a Rule 60(b)(6) motion. Accordingly, because the Williamses' motion was filed within

[4]Whether the trial court improperly entered the July 5, 2018, order compelling arbitration is not an issue before this Court because the Williamses did not appeal from that order. To seek further review of the decision to compel arbitration, the Williamses were required to file a notice of appeal within 42 days of October 15, 2018.

30 days of the entry of the judgment and sought grounds for relief appropriate under Rule 59(e), rather than Rule 60(b)(6), we construe the Williamses' motion as a Rule 59(e) motion. Johnson, 715 So. 2d at 786 (explaining that construing a Rule 59 motion as a Rule 60(b) motion "for the purpose of avoiding the operation of Rule 59.1 ... would run afoul of the intent of the Rules by substantially nullifying Rule 59.1 and rendering the provisions of Rule 59 uncertain").

The Williamses also argue that, even if this Court considered their motion as having been filed pursuant to Rule 59, the July 5, 2018, order granted only Cadillac's, not Harper's, motion to compel arbitration, and, therefore, they argue, the trial court retained jurisdiction to dispose of Harper's motion to compel arbitration. Although the July 5 order does not specifically refer to Harper's motion, the order compels arbitration and stays the proceedings; the order does not stay the proceedings only as to Cadillac, and Harper's motion consists of one paragraph adopting and incorporating Cadillac's motion.

At this stage in the proceedings, Harper is undisputedly an agent of Cadillac. Under a long line of cases, this Court has explained that an agent "'stands in the shoes' of his

principal" and is covered under the terms of his principal's arbitration agreement. Monsanto Co. v. Benton Farm, 813 So. 2d 867, 874 (Ala. 2001)(citing Ex parte Gray, 686 So. 2d 250, 251 (Ala. 1996), McDougle v. Silvernell, 738 So. 2d 806 (Ala. 1999), Ex parte Isbell, 708 So. 2d 571 (Ala. 1997), and Georgia Power Co. v. Partin 727 So. 2d 2 (Ala. 1998)). In Monsanto, this Court reversed a trial court's order denying an agent-employee's motion to compel arbitration. We explained that "the trial court ha[d] already ordered the plaintiffs to arbitrate their claims against [the principal-employer], and the plaintiffs did not appeal that order," and that "[o]rdering [the principal's] agent to a trial on the same facts and legal theories would be anomalous." 813 So. 2d at 874. Similarly, here, the trial court ordered the Williamses to arbitrate their claims against Cadillac. "We presume that trial court judges know and follow the law." Ex parte Atchley, 936 So. 2d 513, 516 (Ala. 2006) (citing Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996)). Therefore, we presume that the trial court knew that, by ordering the Williamses to arbitrate their claims against Cadillac, the Williamses would be required to arbitrate their claims against its agent, Harper. Accordingly, based on the foregoing, we construe the July 5

order as granting the motions of both Cadillac and Harper, Cadillac's agent, to compel arbitration and to stay the proceedings. See, e.g., Boykin v. Law, 946 So. 2d 838, 848 (Ala. 2006)(explaining that, when construing a trial court's judgment, this Court is "free to review 'all the relevant circumstances surrounding the judgment,' and 'the entire judgment ... should be read as a whole in the light of all the circumstances as well as of the conduct of the parties'" (quoting Hanson v. Hearn, 521 So. 2d 953, 955 (Ala. 1988))).

Because the Williamses' July 17, 2018, postjudgment motion was filed pursuant to Rule 59, the 90-day time limit imposed by Rule 59.1 was in effect and the Williamses' motion was denied by operation of law on October 15, 2018. At that point, the order compelling arbitration became final and appealable. The trial court no longer had jurisdiction to modify that order. As this Court has explained, "an order granting or denying arbitration is [not] interlocutory in the sense that it remains 'within the breast of the court' subject to revision at any time before final judgment, because it is now established that unless an appeal is timely taken from the order, the order is final." Bowater, 901 So. 2d at 666; Alabama Psychiatric Servs., P.C. v. Lazenby, [Ms. 1170856,

June 21, 2019] ___ So. 3d ___, ___ (Ala. 2019)(explaining that a "'failure to take an appeal from [an order granting or denying a motion to compel arbitration] within the 42-day time period forecloses later appellate review'" (quoting Bowater, 901 So. 2d at 664)). See also Honea v. Raymond James Fin. Servs., Inc., 240 So. 3d 550, 558 (Ala. 2017)("When a postjudgment motion is denied by operation of law, the trial court 'is "without jurisdiction to enter any further order in [the] case after that date."'" (quoting Ex parte Limerick, 66 So. 3d 755, 757 (Ala. 2011), quoting in turn Ex parte Davidson, 782 So. 2d 237, 241 (Ala. 2000))).

Accordingly, because the trial court, on October 15, 2018, lost jurisdiction to modify the order compelling arbitration, the November 13, 2018, order purporting to deny the Cadillac defendants' motions to compel arbitration is void. "'Any order entered after the trial court loses jurisdiction is void.'" Honea, 240 So. 3d at 558 (quoting Limerick, 66 So. 3d at 757). See also Ex parte Jackson Hosp. & Clinic, Inc., 49 So. 3d 1210, 1212 (Ala. 2010) ("The trial court's order was void because it lost jurisdiction after the running of the 90-day period prescribed by Rule 59.1."). "[A] void order will not support an appeal." Beam v. Taylor, 149

So. 3d 571, 577 (Ala. 2014). Accordingly, we must dismiss the appeal.

APPEAL DISMISSED.

Parker, C.J., and Bolin, Wise, and Sellers, JJ., concur.