

Rel: September 23, 2022

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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2210350

Michael Brandon Barfield

v.

City of Demopolis

**Appeal from Marengo Circuit Court
(CV-20-900107)**

FRIDY, Judge.

Michael Brandon Barfield appeals from the default judgment the Marengo Circuit Court ("the trial court") entered in favor of the City of Demopolis ("the city") in its forfeiture action against him. We dismiss the appeal with instructions.

Background

The city commenced a forfeiture action against Barfield in December 2020. In its complaint, the city alleged that Barfield had been arrested for illegal-drug trafficking and, at the time of his arrest, had been in possession of 176 pounds of "THC controlled substances" and \$14,068 in cash ("the cash"). The city alleged that the cash had been used in the trafficking of illegal substances and was therefore subject to "condemnation."

An employee with the Houston County sheriff's office personally served Barfield with the forfeiture complaint and summons in March 2021. In May 2021, the city filed an application for an entry of default against Barfield based on his "failure to plead, answer, or otherwise defend." In support of its application, the city submitted the affidavit of Rex Flowers, the city's police chief, who stated that Barfield had been served with the complaint on March 30, 2021, and had failed to respond. On September 21, 2021, the trial court entered a default judgment against Barfield that ordered the condemnation and forfeiture of the cash.

On October 19, 2021, Barfield, represented by counsel, filed in the trial court a motion to set aside the default judgment pursuant to Rules

55(c) and 60(b), Ala. R. Civ. P. In that motion, Barfield claimed that he had appeared pro se at a pretrial conference held virtually using videoconferencing technology. Although Barfield did not include the date of the pretrial conference in his motion, the case-action-summary sheet indicates that a virtual pretrial conference was held on March 23, 2021. Barfield asserted that, during that virtual pretrial conference, he had asked the trial court to stay the forfeiture action pending the outcome of his criminal case. He said that he had believed that the trial court had issued an order staying the forfeiture action from the bench, but the case-action-summary sheet does not reflect that the trial court entered such an order. Barfield stated that he had been served with the forfeiture complaint the week after the virtual pretrial conference. He asserted that the trial court had scheduled a second pretrial conference for September 21, 2021, which he had attempted to attend virtually. According to Barfield, when his case was not called on the docket that day, he had inquired as to the status of his case and was told that a default judgment had been entered.

Barfield argued that the default judgment was due to be set aside pursuant to Rule 55(c) because, he said, he had a defense to the city's

action, i.e., that the cash the city seized came from a legitimate source; the city would not be unfairly prejudiced by setting aside the default judgment; and the judgment was not the result of his own willful and culpable conduct. Barfield argued alternatively that, pursuant to Rule 60(b)(4), the trial court should set aside the default judgment because, he said, the city lacked standing to bring the forfeiture action and, therefore, the trial court lacked jurisdiction over the action.¹

The trial court did not rule on Barfield's motion to set aside the default judgment. On January 26, 2022, Barfield filed a notice of appeal, claiming that his motion had been denied by operation of law on January 17, 2022, pursuant to Rule 59.1, Ala. R. Civ. P., which provides that certain postjudgment motions are denied by operation of law if not ruled on within ninety days after the date of filing.²

¹In addition to his motion to set aside the default judgment, Barfield filed a motion to dismiss the action. In it, he argued, as he did in his motion to set aside the default judgment, that the trial court lacked jurisdiction over the action because the city lacked standing to bring the action. Although he indicated in his notice of appeal that he was also appealing from the denial of that motion to dismiss, he does not present arguments concerning the denial of the motion in his appellate brief, and, as a result, we do not address the trial court's ruling on that motion.

²We note that the ninetieth day following Barfield's filing of his postjudgment motion on October 18, 2021, was Monday, January 17,

Analysis

We begin by noting that Barfield's appeal has placed the trial court's default judgment properly before this court for appellate consideration. Although the trial court entered the default judgment on September 21, 2021, Barfield's postjudgment motion, to the extent that it sought relief under Rule 55(c), Ala. R. Civ. P., extended the time by which he was required to file a notice of appeal from that judgment. See Rule 4(a)(3), Ala. R. App. P. That motion, to the extent that it sought relief under Rule 55(c), was denied by operation of law on January 18, 2022. See Rule 59.1, Ala. R. Civ. P., and note 2, *supra*. Barfield thereafter filed a timely notice of appeal from the default judgment and the denial of his motion to set aside that judgment.³

2022, which was a state holiday. Therefore, Barfield's postjudgment motion was deemed denied on Tuesday, January 18, 2021. See Rule 6(a), Ala. R. Civ. P., First Alabama State Bank v. McGowan, 758 So. 2d 1116 (Ala. Civ. App. 2000), and Richburg v. Cromwell, 428 So. 2d 621 (Ala. 1983); see also Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1203-04 (Ala. 2009).

³Barfield also purports to base his appeal on what he perceives was the denial by operation of law of that part of his motion to set aside the default judgment that he based on Rule 60(b)(4), Ala. R. Civ. P. However, motions filed pursuant to Rule 60(b) are not subject to denial by operation of law under Rule 59.1, Ala. R. Civ. P., and, as a result, remain pending until disposed of by the trial court. See Ex parte Caterpillar Fin. Servs.

On appeal, Barfield contends that the trial court erred in refusing to set aside the default judgment because, he asserts, he had a meritorious defense to the complaint, the city would not be unduly prejudiced if the default judgment was set aside, and his conduct was not the cause of the default. See Kirtland v. Fort Morgan Auth. Sewer Serv., Inc., 524 So. 2d 600 (Ala. 1988) (setting forth factors a trial court must consider in deciding whether to set aside a default judgment). We do not reach this argument, however, because we conclude that the city lacked standing to institute the forfeiture action and, as a result, that the trial court lacked subject-matter jurisdiction over the city's action. D.H. v. V.P., [Ms. 2200888, Dec. 3, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021) (holding that an appellate court may take judicial notice of a void judgment or of the lack of subject-matter jurisdiction ex mero motu).

Corp., [Ms. 1200332, June 30, 2021] ___ So. 3d ___ (Ala. 2021); Tucker v. Nixon, 215 So. 3d 1102, 1106 (Ala. Civ. App. 2016). Thus, that part of his motion to set aside the default judgment based on Rule 60(b) is still pending in the trial court and is not before this court on appeal. Even so, the pendency of that motion in the trial court does not prevent this court from reviewing by appeal the default judgment itself and the denial by operation of law of the motion to set aside that judgment under Rule 55(c). See Ex parte R.S.C., 853 So. 2d 228, 233-34 (Ala. Civ. App. 2002).

The city purported to initiate its action seeking forfeiture of the cash pursuant to § 20-2-93, Ala. Code 1975. The version of that statute in effect at the time the city commenced this action provided that all moneys furnished or intended to be furnished by any person in exchange for a controlled substance, traceable to such an exchange, or used or intended to be used to facilitate any violation of any law of this state concerning controlled substances was subject to forfeiture. Former § 20-2-93(a)(4).⁴

Barfield contends that, under § 20-2-93, only the county, through the district attorney's office, or the state, through the attorney general's office, had standing to bring the forfeiture action against him. He asserts that the city, as a municipality not specifically designated to bring the action on behalf of the state or the county, lacked standing to prosecute the action. We agree.

⁴Section 20-2-93, Ala. Code 1975, was significantly amended effective January 1, 2022, after this forfeiture action was commenced. The section authorizing the forfeiture of money used to purchase controlled substances is now codified at § 20-2-93(b)(3). We note that none of the amendments in the current version of § 20-2-93 affects our analysis.

Our supreme court decided this issue in State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1027 (Ala. 1999) ("Rainbow Drive"). Pursuant to former § 20-2-93(h), "the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290," Ala. Code 1975, and § 28-4-286 provides that "[i]t shall be the duty of [the district attorney] in the county or the Attorney General of the state to institute at once or cause to be instituted condemnation proceedings in the circuit court by filing a complaint in the name of the state against the property seized"⁵ In Rainbow Drive, 740 So. 2d at 1027-28, our supreme court held that the City of Gadsden had no standing to bring a forfeiture action against certain real estate allegedly used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state. The court reasoned that the City of Gadsden had "suffered no injury to a 'legally protected right,' because, given the provisions of § 20-2-93 and § 28-4-286, it had no legal right to prosecute or to begin this action." Id. at 1028. In fact, our supreme

⁵Former § 20-2-93(h) is now codified at § 20-2-93(w).

court concluded, the City of Gadsden "was statutorily barred from commencing or prosecuting this action." Id.; see also Green v. City of Montgomery, 87 So. 3d 1195, 1198 n.2 (Ala. Civ. App. 2011).

There is no factual basis on which to distinguish this case from Rainbow Drive. Under § 20-2-93 and § 28-4-286, the city had no legal right to commence the forfeiture action in which the default judgment Barfield challenges was entered; thus, the city had no standing to bring the action. "When a party without standing purports to commence an action, the trial court does not obtain subject-matter jurisdiction." Rainbow Drive, 740 So. 2d at 1028. Any action taken by a trial court without subject-matter jurisdiction, other than dismissing the action, is void." See id. at 1029. Because a void judgment will not support an appeal, McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017), this appeal is dismissed, and the trial court is ordered to vacate the default judgment in favor of the city.

APPEAL DISMISSED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ., concur.