Rel: May 28, 2021.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1200032

State of Alabama

v.

Epic Tech, Inc., et al.

Appeal from Greene Circuit Court
(CV-17-900064)

BOLIN, Justice.

The State of Alabama appeals from an order of the Greene Circuit Court dismissing the State's claims seeking injunctive and declaratory

relief "to abate a public nuisance of unlawful gambling," pursuant to § 6-5-120, Ala. Code 1975, against some, but not all, of the defendants below. The circuit court certified its order as final pursuant to Rule 54(b), Ala. R. Civ. P. However, we determine that the order was not appropriate for Rule 54(b) certification; therefore, we dismiss the appeal.

Facts and Procedural History

On October 4, 2017, the State sued Pen-Tech, LLC, d/b/a Encore Gaming Group ("Pen-Tech"); Epic Tech, LLC, d/b/a Epic Tech Software LLC and/or Aurify Gaming ("Epic Tech"); Greenetrack, Inc.; The Center for Rural Family Development, Inc., d/b/a Green Charity; Dream, Inc., d/b/a Frontier Bingo; TennTom Community Development, Inc., d/b/a Frontier Bingo;[1] Tommy Summerville Police Support League, Inc., d/b/a Palace Bingo; and Greene County Sheriff Jonathan ("Joe") Benison seeking declaratory and injunctive relief "to abate a public nuisance of unlawful gambling," pursuant to § 6-5-120, Ala. Code 1975." The State alleged in its complaint that the defendants "operate, administer, and/or

[1]On January 3, 2018, the State voluntarily dismissed TennTom Community Development from the case.

provide gambling devices at one or more of the five casinos" in Greene County where they also "provide hundreds of slot machines and gambling devices in open, continuous, and notorious use"; that this Court has repeatedly held that the "gambling devices," or electronic gaming machines, are illegal and that the game commonly known as "bingo" cannot be played on the machines; and that the continued operation of the electronic gaming machines by the defendants is both illegal and a public nuisance. The State sought a judgment declaring that the gambling activities being conducted by the defendants are a public nuisance and permanently enjoining the defendants from conducting such unlawful gambling activities.[2]

Also on October 4, 2017, the State moved the circuit court, pursuant to Rule 65(a), Ala. R. Civ. P., for a preliminary injunction to prevent the defendants from using the electronic gaming machines in Greene County; from receiving any moneys in relation to the electronic gaming machines

[2]As will be discussed in more detail infra, the State also commenced in October 2017 identical actions in Macon County and Lowndes County seeking to abate as public nuisances similar gambling activities as those allegedly being conducted by the defendants in Greene County.

in Greene County; from transporting or providing any additional electronic gaming machines in Greene County;[3] and from receiving, utilizing, and/or providing bingo licenses or permits under Amendment No. 743 (Local Amendments, Greene County, § 1, Ala. Const. 1901 (Off. Recomp.)) for the play of electronic bingo in Greene County.[4] The State contended that, by continuing to engage in illegal gambling activity, the defendants continue to operate in clear violation of state law, which works an ongoing harm to the State and to private citizens, creating a public nuisance that must be abated immediately by order of the circuit court.

On November 9, 2017, the State amended its complaint to reallege its nuisance claim seeking declaratory and injunctive relief and to add as defendants Next Level Leaders d/b/a Rivers Edge Bingo and Tishabee Community Center Tutorial Program d/b/a Rivers Edge Bingo

[3]Amendment No. 743 provides, in pertinent part, that "[b]ingo games for prizes or money may be operated by a nonprofit organization in Greene County."

(collectively referred to as "Rivers Edge Bingo"). On October 4, 2018, the State again amended its complaint to reallege its nuisance claim seeking declaratory and injunctive relief and to add as defendants the nonprofit organizations Woman-to-Woman, Greene County E-911, and the Greene County Volunteer Fire Association.

All the defendants filed motions to dismiss, generally arguing that the State had failed to join necessary parties as required by Rule 19, Ala. R. Civ. P., that the circuit court lacked subject matter-jurisdiction over the action, and that the State had failed to state a claim upon which relief could be granted. Specifically, the defendants stated that the proceeds from the operation of "electronic bingo games" go to fund numerous charitable organizations in Greene County pursuant to Amendment No. 743. The defendants contended that the State had been informed of 10 such charitable organizations that had been identified as necessary additional defendants that had not been served. The defendants argued that those charitable organizations have legally protected interests in the so-called bingo operations that are threatened by the outcome of the State's action and must be joined as necessary parties.

Second, the defendants argued that the State has repeatedly taken the position that Alabama "courts are without subject- matter jurisdiction to adjudicate in civil proceedings matters that should be decided in criminal proceedings." Citizenship Tr. v. Keddie-Hill, 68 So. 3d 99, 106 (Ala. 2011)(summarizing this Court's holding in Tyson v. Macon Cnty. Greyhound Park, Inc., 43 So. 3d 587, 589 (Ala. 2010)). Here, the defendants asserted, the State has asked the circuit court to determine the criminality of the defendants' possession and operation of certain electronic gaming machines. Specifically, the defendants pointed out, the State's complaint alleges that that defendants engaged in illegal gambling activities by allegedly possessing the electronic gaming machines, an action the State says has been "specifically criminalized." The defendants noted that § 13A-12-27(b), Ala. Code 1975, makes "[p]ossession of a gambling device ... a Class A misdemeanor." The defendants argued that, because the State is asking the circuit court to decide an issue in a civil case that must be decided under the criminal laws, the circuit court lacked subject-matter jurisdiction to hear the case.

Third, the defendants argued that the State's complaint should be dismissed pursuant to Rule 12(b)(6), Ala. R. Civ. P., because, they asserted, the State did not have the authority to bring this action. Specifically, the defendants contended that the statute that permitted the State to obtain an injunction to abate a public nuisance involving gaming -- former §13-7-90, Ala. Code 1975 -- has been repealed. See Wilkinson v. State ex rel. Morgan, 396 So. 2d 86, 88 (Ala. 1981). Further, the defendants argued that their licenses, issued pursuant to the regulatory framework created pursuant to Amendment No. 743, to operate bingo games in Greene County barred the State's nuisance claim because, they alleged, those licenses were intended to encourage a business activity that the relevant governmental authority licenses and a license to conduct a certain activity shields the activity from legal attack as a public nuisance. Thus, the defendants argued that the State has failed to state a claim upon which relief could be granted.

The State responded by arguing that the absent parties identified by the defendants were not necessary to adjudicate the claims in this case. The State contended that this case specifically focused on the State's

request to enjoin the activities of the defendants, who, the State alleged, were allowing or conducting the illegal gambling operations in Greene County; the State asserted that it had sued the defendants because they had been identified by the State as the parties that were licensing, permitting, running, or promoting the "electronic gambling" operations in Greene County. Without any indication or proof that the absent parties were responsible for the illegal actions giving rise to the nuisance, the State argued, there was no reason to require their involvement in the case.

The State further argued in its response that it has properly pleaded in its complaint that a nuisance, composed of licensing, permitting, marketing, and offering illegal gambling devices, is ongoing in Greene County. The State argued that any contention by the defendants that its nuisance claim is based on former §13-7-90, Ala. Code 1975, which was repealed by Act No. 607, § 9901, Ala. Acts 1977, effective May 17, 1978, is misplaced and inapplicable. The State agreed that this particular statute has been repealed and is inapplicable; however, the State contended that its repeal does not preclude the State from acting on behalf

of its citizens and upholding the laws of this state, that the repeal of §13-7-90 may have eliminated a specific statute the State could have used to seek abatement of an illegal gambling nuisance, but that the principles the State relies on are firmly entrenched in Alabama law and govern this action.

The State also argued in its response that it had the authority to bring the public-nuisance claim against the defendants to end their alleged illegal gambling operations. As explained earlier in this opinion, the defendants argued in their motions to dismiss that the circuit court was without jurisdiction to adjudicate this action because, they asserted, the circuit court lacked jurisdiction to adjudicate in civil proceedings matters that should be decided in criminal proceedings. In response the State noted that targets of potential criminal prosecution cannot invoke the jurisdiction of a civil court to enjoin or interfere with the State's enforcement of its criminal laws. See Tyson v. Jones, 60 So. 3d 831 (Ala. 2010). However, the State explained that, here, no putative criminal defendant is using civil law in an attempt to frustrate criminal processes; rather, the State argued that it was merely using one of its authorized

powers to enjoin and abate a public nuisance and was not specifically asking the circuit court to determine the guilt of any of the defendants under the criminal laws of this state.

The State next argued in its response that it could enforce state laws against illegal gambling activities despite the fact that, according to the defendants, the defendants had been licensed to conduct such activities, because, the State asserted, the permitting and licensing of activity by the sheriff in Greene County does not prohibit the State from seeking the proper and just administration of the state's laws and such licensing does not legalize in Greene County conduct that is illegal throughout the state.

As noted earlier, see note 2, supra, in October 2017, the State also commenced actions identical to this action in Macon County and Lowndes County, seeking to abate as public nuisances allegedly illegal gambling activities being conducted in those counties similar to the allegedly illegal gambling activities being conducted in Greene County. The State alleged that the defendants in the Macon County case and the defendants in Lowndes County case " 'operate, administer, license and/or provide gambling devices' " for casinos located in their respective counties and that

those defendants " 'provide hundreds of slot machines and gambling devices in open, continuous, and notorious use.' " State v. Epic Tech, LLC, [Ms. 1180675, Sept. 25, 2020] ___ So. 3d ___, ___ (Ala. 2020). The defendants in those cases moved the trial courts to dismiss the State's claims, arguing that the trial courts lacked subject-matter jurisdiction over the State's requests for a declaratory judgment and injunctive relief; that the complaints failed to state a claim upon which relief could be granted; and that the State had failed to join the operators of the Wind Creek Casinos as necessary parties.

Following a hearing, the Lowndes Circuit Court entered a judgment granting the motion to dismiss filed in the Lowndes County case, determining that it did not have subject-matter jurisdiction to adjudicate the claims for injunctive and declaratory relief sought in that case. The Lowndes Circuit Court also found that, even if it did have subject-matter jurisdiction, it would nevertheless be required to dismiss the State's complaint for failure to state a claim upon which relief could be granted and for failure to include indispensable parties. Epic Tech, supra.

Following a hearing, the Macon Circuit Court also entered a judgment granting the motion to dismiss filed in the Macon County case, determining that it lacked subject-matter jurisdiction to adjudicate the State's claims; that the State had failed to state a claim upon which relief could be granted; and that the State had failed to join certain indispensable parties. The State appealed both judgments, and the cases were consolidated on appeal.[5] Epic Tech, supra.

On appeal, this Court reversed the trial courts' judgments granting the motions to dismiss the cases, holding that (1) the fact that the operation of illegal gambling devices constituted a criminal offense did not deprive the trial courts of subject-matter jurisdiction in the State's actions seeking declaratory and injunctive relief from the defendants' alleged public nuisance, (2) the State properly pleaded a claim of public nuisance against the defendants, and (3) the operators of the Wind Creek

[5]In both cases the trial courts decided to only hear arguments and rule on the motions to dismiss before they proceeded to adjudicate the State's motions for preliminary injunctions.

Casinos were not necessary parties to the State's actions. Epic Tech, supra.

On May 1, 2019, Sheriff Benison moved the circuit court, pursuant to Rule 19, Ala. R. Civ. P., to add Great Western Development Corporation, Inc., as an indispensable party. Sheriff Benison alleged that Great Western was a charitable organization licensed to conduct bingo operations in Greene County pursuant to Amendment No. 743. Sheriff Benison further alleged that Great Western was not actually conducting bingo operations but was actively taking steps toward opening and operating a bingo hall much like those being operated by certain defendants in this case.

On May 2, 2019, the circuit court entered an order stating that it would rule on the defendants' motions to dismiss "based on the filings/pleadings unless a party objects," in which case the circuit court stated that it would set the matter for a hearing.

On May 8, 2019, Sheriff Benison objected to the trial court's ruling on the motions to dismiss based on the pleadings without Great Western first being added as a defendant in the action. Also on May 8, 2019,

Sheriff Benison gave notice to the circuit court of the withdrawal of his motion to dismiss and of his intention to file an answer to the State's complaint.

On May 13, 2019, Rivers Edge Bingo, Pen-Tech, and The Center for Rural Family Development objected to the circuit court's ruling on the motions to dismiss based on the pleadings without first adding all necessary parties to the matter and then allowing the parties to conduct discovery. Those defendants also withdrew their motions to dismiss and asked that those motions be converted to motions to add necessary parties pursuant to Rule 19.

On December 9, 2019, the circuit court entered an order setting all pending motions for a hearing January 24, 2020.[6] On December 18, 2019, Epic Tech moved the circuit court to clarify its order setting the pending motions for a hearing, asserting that the State's request for preliminary injunctive relief, if not rendered moot by the pending motions to dismiss, would require extended evidentiary hearings before the circuit court. Epic

[6]That hearing date was subsequently reset for February 28, 2020.

Tech requested that the circuit court enter an order clarifying the procedure to be followed by the parties and their counsel at the hearing on the pending motions, by providing them with notice that motions requiring protracted evidentiary hearings would not be set or heard on that date but would be reserved for a subsequent hearing, if necessary. On December 19, 2019, the circuit court entered an order stating that it would consider all pending motions other than the motions that required evidentiary hearings. The circuit court stated that, if necessary, it would schedule at a later date any necessary evidentiary hearings.

Following the hearing, the State filed a supplemental response to the defendants' motions to dismiss and a motion to set the State's motion for a preliminary injunction for an expedited hearing. The State submitted a copy of this Court's decision in Epic Tech to the circuit court, stating that this Court had reversed the dismissal of substantially similar actions in Macon County and Lowndes County by finding against the same arguments presented by the defendants in this case and had remanded the cases to the respective trial courts for further proceedings. The State argued to the circuit court that the holding of this Court in Epic Tech

applied directly to the legal issues presented in this case and that the circuit court had no option but to deny the motions to dismiss and allow the State's case to proceed.

On October 7, 2020, the circuit court entered an order dismissing the State's complaint, finding, in part, as follows:

> "The adjudication of the State's Complaint for injunctive and declaratory relief would require this Court to make a determination as to whether the Defendants' actions in Greene County are criminal. Alabama law is clear that a civil court does not have subject matter jurisdiction to adjudicate a legal issue that would be the basis of a criminal action. State v. Greenetrack, Inc., 154 So. 3d 940, 958 (Ala. 2014) (Courts do not have jurisdiction to 'effectively adjudicate the very legal issue that would be the gravamen of [criminal] actions' and because the State cannot obtain declaratory relief where a private individual cannot obtain declaratory relief); Tyson v. Macon Cty. Greyhound Park, Inc., 43 So. 3d 587 (Ala. 2010) .
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> "....
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> "The Supreme Court of Alabama has recognized that only 'a court of equity with proper legislative authorization can assume jurisdiction to abate a nuisance.' Gen. Corp. v. State ex rel. Sweeten, 294 Ala. 651, 663, 320 So. 2d 668, 673 (1975) . The state statute which declared gaming as a common nuisance, Ala. Code § 13-7-90 was repealed in 1977 and has not been replaced by the Legislature.
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> "The State relies on Try-Me Bottling Co. v. State, 178 So. 231 (Ala. 1938) which in turn relied upon the repealed statute.

> "In Wilkinson v. State ex rel. Morgan, 396 So. 2d 86 (Ala. 1981), the State argued that Try-Me Bottling allowed an injunction to stand in spite of the repeal of § 13-7-90. The Alabama Supreme Court rejected the State's argument on the general rule that courts of equity have no jurisdiction to enjoin the commission of offenses against the criminal laws of the State. Id. at 90. The Court further stated that Try-Me concerned the adverse effect on children who were searching through garbage to find bottle caps with winning numbers that were part of the lottery scheme. Id. Nothing remotely similar was offered by the State, nor did the State present or argue any other authority supporting its claim for public nuisance.
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> "The State's Complaint fails to state a claim for which relief can be granted."

The State appealed following the dismissal of its complaint. A question arose in this Court as to whether the circuit court's order dismissing the State's complaint pertained to all the defendants because the record on appeal indicated that a number of the defendants had withdrawn their motions to dismiss. On March 15, 2021, this Court remanded the cause to the circuit court for the entry of an amended order identifying the defendants to which the dismissal order pertained and to certify the order as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. On remand, the circuit court entered an amended order naming The Center for Rural

Family Development,[6] Dream, Inc., Tommy Summerville Police Support League, Epic Tech, Greenetrack, Greene County E-911, Greene County Volunteer Fire Association, and Woman-to-Woman as the defendants to which the order dismissing the State's complaint pertained. The circuit court certified the judgment as final pursuant to Rule 54(b).

Discussion

Although the circuit court certified its order on remand dismissing the State's claims against certain defendants as final pursuant to Rule 54(b), the circuit court stated that "its judgment of October 7, 2020, does not appear to be amenable to Rule 54(b) certification because ... the Court's certification entered here to comply with the Supreme Court's remand order mandate[ ] appear[s] to invite additional appellate review in piecemeal fashion."

This Court has stated the following with regard to Rule 54(b) certification:

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[6]The record indicates that The Center for Rural Family Development actually withdrew its motion to dismiss. We also note that Rivers Edge Bingo filed a brief on appeal before we remanded the case and the circuit court entered its amended order.

"'"Rule 54(b) certifications 'should be made only in exceptional cases.'"' Posey v. Mollohan, 991 So. 2d 253, 258-59 (Ala. Civ. App. 2008) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 212 (Ala. Civ. App. 1997)).

"'Rule 54(b) provides, in part:

> "'"When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

"'This Court recently explained the appropriate standard for reviewing Rule 54(b) certifications, stating:

> "'"'If a circuit court certifies a judgment as final pursuant to Rule 54(b), an appeal will generally lie from that judgment.' Baugus v. City of Florence, 968 So. 2d 529, 531 (Ala. 2007).
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> "'"Although the order made the basis of the Rule 54(b) certification disposes of the entire claim against [the defendant in this case], thus satisfying

> the requirements of Rule 54(b) dealing with eligibility for consideration as a final judgment, there remains the additional requirement that there be no just reason for delay. A circuit court's conclusion to that effect is subject to review by this Court to determine whether the circuit court exceeded its discretion in so concluding."

" 'Centennial Assocs. v. Guthrie, 20 So. 3d 1277, 1279 (Ala. 2009). Reviewing the circuit court's finding in Schlarb v. Lee, 955 So. 2d 418, 419-20 (Ala. 2006), that there was no just reason for delay, this Court [has] explained that certifications under Rule 54(b) are disfavored[.]

" '....

" 'In considering whether a circuit court has exceeded its discretion in determining that there is no just reason for delay in entering a judgment, this Court has considered whether "the issues in the claim being certified and a claim that will remain pending in the circuit court ' "are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results." ' " Schlarb, 955 So. 2d at 419-20 (quoting Clarke-Mobile Counties Gas Dist. v. Prior Energy Corp., 834 So. 2d 88, 95 (Ala. 2002), quoting in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987), and concluding that conversion and fraud claims were too intertwined with a pending breach-of-contract claim for Rule 54(b) certification when the propositions on which

the appellant relied to support the claims were identical). See also Centennial Assocs., 20 So. 3d at 1281 (concluding that claims against an attorney certified as final under Rule 54(b) were too closely intertwined with pending claims against other defendants when the pending claims required "resolution of the same issue" as issue pending on appeal); and Howard v. Allstate Ins. Co., 9 So. 3d 1213, 1215 (Ala. 2008) (concluding that the judgments on the claims against certain of the defendants had been improperly certified as final under Rule 54(b) because the pending claims against the remaining defendants depended upon the resolution of common issues).

"'... In MCI Constructors, LLC v. City of Greensboro, 610 F. 3d 849 [, 855] (4th Cir. 2010), the United States Court of Appeals for the Fourth Circuit explained:

> "'"In determining whether there is no just reason for delay in the entry of judgment, factors the district court should consider, if applicable, include:
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> > "'"'(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be

> obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of circuit, frivolity of competing claims, expense, and the like.'
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> " ' "Braswell [Shipyards, Inc. v. Beazer E., Inc.], 2 F. 3d [1331,] 1335-36 [(4th Cir.1993)] ... (quoting Allis-Chalmers Corp. v. Phila. Elec. Co., 521 F.2d 360, 364 (3d Cir. 1975) [overruled on other grounds by Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1 (1980)])." '
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> "Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1263-64 (Ala. 2010) (footnotes and emphasis omitted)."

Stephens v. Fines Recycling, Inc., 84 So. 3d 867, 875-76 (Ala. 2011). Further, " ' " ' [a]ppellate review in a piecemeal fashion is not favored, and circuit courts should certify a judgment as final, pursuant to Rule 54(b), only in a case where the failure to do so might have a harsh effect.' " ' "

Stephens, 84 So. 3d at 879 (quoting First S. Bank v. O'Brien, 931 So. 2d 50, 53 (Ala. Civ. App. 2005)).

In this case, the State has asserted identical claims against similarly situated defendants. All the defendants moved the circuit court to dismiss the claims against them. Subsequently, however, a number of the defendants withdrew their motions to dismiss. The circuit court entered an order dismissing the State's claims as to those defendants who still had motions to dismiss pending and certified that order as final pursuant to Rule 54(b). The circuit court's order dismissing the claims against some of the defendants left pending in the circuit court claims against other defendants that were identical to the claims adjudicated by the circuit court in the order certified as final pursuant to Rule 54(b). We note that, in addition to the fact that the adjudicated and unadjudicated claims are identical, the likelihood of a future appeal to this Court is almost certain once the circuit court adjudicates the remaining claims. Accordingly, given this Court's disfavor of Rule 54(b) certifications, the related nature of the unadjudicated claims and the adjudicated claims, and the likelihood of a future appeal regarding the unadjudicated claims, resulting in

piecemeal appellate review, we conclude that Rule 54(b) certification is not proper in this case. Accordingly, because there is no final judgment in this case, the appeal is due to be dismissed. See Stephens, supra.

APPEAL DISMISSED.

Parker, C.J., and Wise, Bryan, Sellers, and Stewart, JJ., concur.

Bolin, Shaw, Mendheim, and Mitchell, JJ., concur specially.

BOLIN, Justice (concurring specially).

In October 2017, identical actions were commenced by the State in Greene County, Macon County, and Lowndes County seeking injunctive and declaratory relief to abate alleged public nuisances. This case proceeded much slower than the other cases, to the point where it has now been pending for over three and one-half years, and there is still not even a determination regarding who are necessary parties to the action. Such inordinate delay prevents this Court from being able to rule on the merits of this appeal due to a lack of a final judgment. Accordingly, this case must now be even further delayed.

This case presents a question of utmost importance involving an alleged public nuisance. I urge the parties, and the circuit court, to proceed with this case as promptly as possible so as to avoid its continuing to languish and cause further delay.

Shaw, Mendheim, and Mitchell, JJ., concur.

SHAW, Justice (concurring specially).

I concur in the main opinion and with Justice Bolin's special writing. I write specially to note the following.

When a court lacks jurisdiction, it has a duty to recognize that fact ex mero motu, that is, on its own motion. Lane v. State, 66 So. 3d 824, 826 n.2 (Ala. 2010) ("A court has a duty to notice jurisdictional defects ex mero motu."). The proper response is to dismiss the case. Cadle Co. v. Shabani, 4 So. 3d 460, 463 (Ala. 2008) ("When the absence of subject-matter jurisdiction is noticed by, or pointed out to, the trial court, that court has no jurisdiction to entertain further motions or pleadings in the case. It can do nothing but dismiss the action forthwith.").

Here, the trial court held that, because of the nature of the State's action, it lacked jurisdiction over the action. Under the trial court's rationale, there appears to be nothing indicating that it has jurisdiction over the State's action regarding any of the defendants. If the trial court believes that is true, then it has a duty to dismiss the entire action and all the defendants, regardless of whether certain defendants have not moved the trial court to do so, lest it risk inexplicably frustrating appellate

scrutiny of its decision and thereby invite mandamus review by this Court of its inaction.