

Rel: October 22, 2021

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200242

Wynlake Residential Association, Inc.; Wynlake Development, LLC; SERMA Holdings, LLC; Builder1.com, LLC; J. Michael White; Shandi Nickell; and Mary P. White

v.

Timothy O. Hulsey, individually and in a representative capacity as a member of Wynlake Residential Association, Inc.

**Appeal from Shelby Circuit Court
(CV-17-901186)**

BRYAN, Justice.

1200242

Wynlake Residential Association, Inc. ("the homeowners' association"), Wynlake Development, LLC, SERMA Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White ("the defendants") appeal from the Shelby Circuit Court's judgment on an arbitration award entered against them. Because the defendants' appeal is untimely, we dismiss the appeal.

In December 2017, Timothy O. Hulse, acting individually and in a representative capacity as a member of the homeowners' association, sued the defendants.¹ Hulse alleged several claims against the defendants regarding various issues, including assessments levied against homeowners by the homeowners' association. The defendants moved the circuit court to compel arbitration pursuant to an arbitration agreement, and the circuit court granted the motion to compel arbitration. The case proceeded to arbitration, and the arbitrator issued an award in favor of Hulse, awarding monetary and injunctive relief. The defendants sought

¹Hulse also sued Jim Wheat, a former president of the homeowners' association. However, the arbitration award was not entered against Wheat, and he is not a party to this appeal.

1200242

review of the award in the circuit court, where, as we will explain below, Hulsey again prevailed. The defendants then appealed to this Court.

We take this opportunity to emphasize that Rule 71B, Ala. R. Civ. P., establishes a unique procedure for appealing an arbitration award.

Rule 71B provides:

"(a) Who May Appeal. Any party to an arbitration may file a notice of appeal from the award entered as a result of the arbitration.

"(b) When Filed. The notice of appeal shall be filed within thirty (30) days after service of notice of the arbitration award. Failure to file within thirty (30) days shall constitute a waiver of the right to review.

"(c) Where Filed. The notice of appeal shall be filed with the clerk of the circuit court where the action underlying the arbitration is pending or if no action is pending in the circuit court, then in the office of the clerk of the circuit court of the county where the award is made.

"(d) What Filed. With the notice of appeal, the appellant shall file a copy of the award, signed by the arbitrator, if there is only one, or by a majority of the arbitrators, along with the submission to the arbitrator or arbitrators and any supporting documents or record of the proceedings, if available. If no record is available, the appellant shall so state. If a record is to be prepared but is not completed within the time provided in paragraph (b) of this rule, the appellant shall so state in the notice of appeal and shall file the record within thirty (30) days

after the filing of the notice of appeal, unless the court for good cause shown shall allow additional time.

"(e) How Served. If the arbitration arose out of a pending action, service shall be made as provided in Rule 5[, Ala. R. Civ. P.]. If there is no action pending, service shall be made as provided in Rules 4 through 4.4[, Ala. R. Civ. P.,] and upon any counsel who appeared in the arbitration for the party being served.

"(f) Procedure After Filing. The clerk of the circuit court promptly shall enter the award as the final judgment of the court. Thereafter, as a condition precedent to further review by any appellate court, any party opposed to the award may file, in accordance with Rule 59, [Ala. R. Civ. P.,] a motion to set aside or vacate the judgment based upon one or more of the grounds specified in Ala. Code 1975, § 6-6-14, or other applicable law. The court shall not grant any such motion until a reasonable time after all parties are served pursuant to paragraph (e) of this rule. The disposition of any such motion is subject to civil and appellate rules applicable to orders and judgments in civil actions.

"(g) Appellate Review. An appeal may be taken from the grant or denial of any Rule 59 motion challenging the award by filing a notice of appeal to the appropriate appellate court pursuant to Rule 4,[Ala. R. App. P.].

"(dc) District Court Rule. Rule 71B applies to appeals from arbitration awards arising from actions initially filed in the district court. As provided above, the appeal is to the circuit court."

Thus, in summary,

1200242

"Rule 71B establishes the following procedure for the appeal of an arbitration award: (1) A party must file a notice of appeal with the appropriate circuit court within 30 days after service of the notice of the arbitration award; (2) the clerk of the circuit court shall promptly enter the award as the final judgment of the circuit court; (3) the aggrieved party may file a Rule 59, Ala. R. Civ. P., motion to set aside or vacate the judgment, and such filing is a condition precedent to further review by any appellate court; (4) the circuit court grants or denies the Rule 59 motion; and (5) the aggrieved party may then appeal from the circuit court's judgment to the appropriate appellate court."

Guardian Builders, LLC v. Uselton, 130 So. 3d 179, 181 (Ala. 2013).

In this case, notice of the arbitration award was served on October 4, 2019. On October 30, 2019, the defendants filed a timely notice of appeal to the circuit court. That same day, the defendants filed a Rule 59, Ala. R. Civ. P., motion, which is a condition precedent for further review of the award by any appellate court. Upon the defendants' filing of the notice of appeal, the clerk of the circuit court should have promptly entered the arbitration award as the final judgment of the circuit court, pursuant to Rule 71B(f). However, the arbitration award was not entered as the final judgment of the circuit court until September 2, 2020. Although the defendants' Rule 59 motion was filed before the entry of the

1200242

award as the judgment of the circuit court, that irregularity was not procedurally fatal. In the context of the procedure set out in Rule 71B, when a Rule 59 motion is filed before the clerk's entry of the award as the judgment of the circuit court, the Rule 59 motion quickens upon the entry of the judgment. See Alabama Psychiatric Servs., P.C. v. Lazenby, 292 So. 3d 295, 298 (Ala. 2019) (stating that, in an appeal from an arbitration award, a premature Rule 59 motion quickened when the clerk of the circuit court later entered the award as the judgment of the circuit court); and Ex parte Cavalier Home Builders, LLC, 275 So. 3d 1110, 1112 (Ala. 2018) (same). Thus, when the clerk of the circuit court entered the arbitration award as the final judgment of the circuit court on September 2, 2020, the Rule 59 motion quickened and was ripe for a decision by the circuit court. Id.

The quickening of the Rule 59 motion on September 2, 2020, was a crucial event, because it initiated the 90-day period in which the circuit court had to rule on the Rule 59 motion under Rule 59.1, Ala. R. Civ. P. We emphasize that "Rule 59.1 applies to a Rule 59 motion filed under the provisions of Rule 71B. See Rule 71B(f) ('The disposition of any such [Rule

1200242

59] motion is subject to civil and appellate rules applicable to orders and judgments in civil actions.')." Ex parte Cavalier Home Builders, 275 So. 3d at 1112 n.3. Rule 59.1 provides, in pertinent part:

"No postjudgment motion filed pursuant to Rules 50, 52, 55, or 59[, Ala. R. Civ. P.,] shall remain pending in the trial court for more than ninety (90) days, unless with the express consent of all the parties, which consent shall appear of record, or unless extended by the appellate court to which an appeal of the judgment would lie, and such time may be further extended for good cause shown. Consent to extend the time for a hearing on the postjudgment motion beyond the 90 days is deemed to include consent to extend the time for the trial court to rule on and dispose of the postjudgment motion. A failure by the trial court to render an order disposing of any pending postjudgment motion within the time permitted hereunder, or any extension thereof, shall constitute a denial of such motion as of the date of the expiration of the period."²

In this case, the 90-day period during which the circuit court could have ruled on the Rule 59 motion expired on December 1, 2020. There is no indication that the 90-day period was extended under Rule 59.1. Thus, the defendants' Rule 59 motion was deemed denied by operation of law on

²We note that Rule 59.1 was amended effective October 1, 2020, to add the second sentence of Rule 59.1 quoted above: "Consent to extend the time for a hearing on the postjudgment motion beyond the 90 days is deemed to include consent to extend the time for the trial court to rule on and dispose of the postjudgment motion."

1200242

December 1, 2020. See Rule 59.1; Ex parte Davidson, 782 So. 2d 237, 241 (Ala. 2000) ("If a trial judge allows a postjudgment motion to remain pending and not ruled upon for 90 days, then the motion is denied by operation of law at the end of the 90th day and the trial judge then loses jurisdiction to rule on the motion."). The circuit court purported to deny the Rule 59 motion on January 20, 2021, 50 days after it was denied by operation of law.³ However, the circuit court lost jurisdiction to rule on

³The circuit court's order purporting to deny the Rule 59 motion addressed other matters, including stays during the pendency of an appeal and the enforcement and execution of the award that had been entered as the judgment of the court. For example, the circuit court declined to stay the injunctive relief ordered in the award pending an appeal; regarding the monetary relief awarded, the circuit court directed the defendants to pay a supersedeas bond and stated that, if the bond was not paid, Hulsey would be allowed to directly execute on the monetary portion of the award. See Rules 62(c) and (d), Ala. R. Civ. P. (concerning injunctions and stays pending an appeal). The circuit court also stated that the defendants could not "transfer, sell, convey, lease, mortgage, or otherwise dispose of any property which may be the subject of execution to satisfy the Arbitration Award." In addition to challenging the circuit court's denial of their Rule 59 motion seeking to set aside or vacate the award, the defendants also challenge the provision in the circuit court's order concerning property that could be subject to Hulsey's efforts to satisfy the judgment. The defendants briefly argue that that provision provides relief not contained in the award and, thus, that the circuit court exceeded its authority. Therefore, the defendants essentially argue, the circuit court not only denied their motion seeking to set aside or vacate the award but

1200242

the Rule 59 motion once it was denied by operation of law. See Ex parte Davidson, 782 So. 2d at 241; and Ex parte Caterpillar, Inc., 708 So. 2d 142, 143 (Ala. 1997) ("If a trial court does not rule on a post-judgment motion within 90 days, it loses jurisdiction to rule on the motion.").

When a Rule 59 motion "is deemed denied under the provisions of Rule 59.1[,] ... the time for filing a notice of appeal shall be computed from the date of denial of such motion by operation of law, as provided for in Rule 59.1." Rule 4(a)(3), Ala. R. App. P. Thus, the defendants had 42 days from the date the postjudgment motion was denied by operation of law on December 1, 2020, to file a notice of appeal. See, e.g., Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1204 (Ala. 2009) (stating that the 42-day period for filing a notice of appeal is computed from the date of denial of such motion by operation of law under Rule

also modified the award. However, it appears that the circuit court simply purported to deny the Rule 59 motion and at the same time took steps regarding the enforcement and execution of the judgment. "A trial court has the inherent power to enforce its judgments 'and to make such orders and issue such process as may be necessary to render [the judgments] effective.'" Goetsch v. Goetsch, 990 So. 2d 403, 413 (Ala. Civ. App. 2008) (quoting Dial v. Morgan, 515 So. 2d 14, 15 (Ala. Civ. App. 1987)).

1200242

59.1). Accordingly, the defendants had until January 12, 2021, to file a notice of appeal. However, the defendants did not file the notice of appeal to this Court until January 20, 2021, the same day the circuit court purported to rule on the Rule 59 motion, after the time for filing a notice of appeal had expired. "An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court." Rule 2(a)(1), Ala. R. App. P. Thus, because the defendants' notice of appeal was untimely, we lack jurisdiction and must dismiss the appeal. Although no party has questioned this Court's jurisdiction, "jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987). Accordingly, we dismiss the appeal.

APPEAL DISMISSED.

Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ., concur.