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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Ex parte Alabama Medicaid Agency

PETITION FOR WRIT OF MANDAMUS

(In re: Carol H. Armstrong

v.

Alabama Medicaid Agency)

(Chilton Circuit Court, CV-19-900120)

DONALDSON, Judge.

Alabama Medicaid Agency ("the agency") petitions this court for a writ of mandamus directing the Chilton Circuit

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Court ("the trial court") to dismiss the underlying action initiated by Carol H. Armstrong for lack of subject-matter jurisdiction, pursuant to § 41-22-1 et seq., Ala. Code 1975, the Alabama Administrative Procedure Act ("the AAPA").¹ We grant the petition and issue the writ.

The materials submitted by the parties indicate the following.² On October 30, 2018, the agency awarded Armstrong eligibility for nursing-home benefits subject to a transfer penalty regarding a real-estate transaction. Armstrong requested a fair hearing regarding the award and the transfer penalty. In a letter dated May 17, 2019, the agency informed Armstrong that it was denying her request for a fair hearing on the basis that her request had been untimely. The agency stated in the letter that the notice of the award and the transfer penalty provided to Armstrong was dated October 30, 2018, and that it did not receive a request for a fair hearing on the matter until March 14, 2019, more than 60 days after

¹In Armstrong's response, her counsel asserts that he also serves as her guardian. For the purposes of this opinion, we attribute the actions and circumstances regarding Armstrong's counsel to Armstrong herself.

²We have omitted some factual assertions by the parties that are not pertinent to our disposition.

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the notice. On May 21, 2019, the letter, which was addressed to Armstrong's counsel and guardian,³ was delivered and received, as indicated in a document from the United States Postal Service.

On May 28, 2019, Armstrong filed a complaint in the trial court seeking an appeal of the agency's denial of her request for a fair hearing. Among other allegations, Armstrong alleged that she had timely filed a request to the agency for a fair hearing within 60 days of October 30, 2018. The agency was served the complaint on July 23, 2019.

On August 21, 2019, the agency filed a motion to dismiss the complaint for lack of subject-matter jurisdiction. In part, the agency argued that Armstrong had failed to comply with the requirements of the AAPA to perfect an appeal from the agency's decision to deny her request for a fair hearing. On October 18, 2019, the trial court entered an order stating that it had heard arguments on the agency's motion to dismiss. In the order, the trial court stayed the case "while [the agency] sets ups [sic] and provides [Armstrong] a 'fair

³See note 1, supra.

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hearing on the merits of this contested case of denial of benefits for ... Armstrong.'" "

On October 18, 2019, the agency filed a "Motion to Alter, Amend, or Vacate Order." In the motion, the agency argued that the directives in the October 18, 2019, order were premature because there was no justiciable controversy before the trial court. The agency asserted that it had not filed an answer and had filed only a motion to dismiss the complaint. On October 20, 2019, the trial court entered an order denying the agency's motion to dismiss.

On October 29, 2019, the agency filed the present petition for a writ of mandamus to this court. Armstrong submitted a response to the petition on November 12, 2019. We have jurisdiction over the petition pursuant to § 12-3-10, Ala. Code 1975, and § 12-3-11, Ala. Code 1975.

A petition for a writ of mandamus is the appropriate means to review the denial of an administrative agency's motion to dismiss a complaint in a circuit court for lack of subject-matter jurisdiction. See Ex parte Builders & Contractors Ass'n of Mississippi Self-Insurer's Fund, 980 So. 2d 1003, 1006 (Ala. Civ. App. 2007) (mandamus review of denial

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of motion to dismiss for lack of subject-matter jurisdiction). We apply the following standard of review to the agency's petition:

"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003) (quoting Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)).

The agency argues that the trial court lacked subject-matter jurisdiction because, it asserts, Armstrong did not comply with the requirements in § 41-22-20, Ala. Code 1975, for filing a notice of appeal.

"Anyone aggrieved by a final decision of an administrative agency in a contested case is entitled to judicial review as provided in Ala. Code 1975, § 41-22-20. 'Appeals from [administrative-agency] decisions are purely statutory and the time periods provided by the statute must be strictly observed.... In other words, the jurisdiction of the trial court is determined by compliance with these statutory time periods.' State Medicaid Agency v. Anthony, 528 So. 2d 326, 327 (Ala. Civ. App. 1988). Accord Ex parte Worley, 46 So. 3d 916, 924 (Ala. 2009) (plurality opinion); and Eitzen v. Medical Licensure Comm'n of

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Alabama, 709 So. 2d 1239, 1240 (Ala. Civ. App. 1998).

"In Davis v. Alabama Medicaid Agency, 519 So. 2d 538 (Ala. Civ. App. 1987), this court stated:

"Appeals from agency decisions are purely statutory, and the time constrictions must be satisfied. Although this result may seem harsh at first blush, our Rules of Civil Procedure have a similar mechanism embodied in Rule 59.1, A[1a]. R. Civ. P. A motion for [a] new trial, et cetera, is deemed denied if not ruled on within 90 days. The fact that a court may enter an order after the 90 day period ruling on the motion has no effect in determining the date that the notice of appeal must be filed. The order is a mere nullity. Olson v. Olson, 367 So. 2d 504 (Ala. Civ. App. 1979)."

"519 So. 2d at 539-40 (quoting trial court's order)."

Ex parte Alabama State Pers. Bd., 86 So. 3d 993, 995-96 (Ala. Civ. App. 2011).

Section 41-22-20(b) requires that a party file a notice of appeal with the administrative agency in order to obtain judicial review, stating, in relevant part:

"All proceedings for review may be instituted by filing of notice of appeal or review and a cost bond with the agency to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the agency or the court on a showing of substantial hardship."

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This court has stated:

"Based on the plain language of § 41-22-20(b), a party must 'file' a notice of appeal with the administrative agency that issued the final decision at issue as a preliminary step to invoking the jurisdiction of a circuit court to conduct a judicial review of that decision. See Ex parte Alabama State Pers. Bd., 90 So. 3d 766, 769 (Ala. Civ. App. 2012)."

L.C. v. Shelby Cty. Dep't of Human Res., [Ms. 2180442, Aug. 9, 2019] ___ So. 3d ___, ___ (Ala. Civ. App. 2019) (emphasis added).

The period for filing a notice of appeal with an administrative agency is specified in § 41-22-20(d), which provides:

"The notice of appeal or review shall be filed within 30 days after the receipt of the notice of or other service of the final decision of the agency upon the petitioner The petition for judicial review in the circuit court shall be filed within 30 days after the filing of the notice of appeal or review. Copies of the petition shall be served upon the agency and all parties of record. ... Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter [i.e., the AAPA], except that for good cause shown, the judge of the reviewing court may extend the time for filing, not to exceed an additional 30 days, or, within four months after the issuance of the agency order, issue an order permitting a review of the agency decision under this chapter notwithstanding such waiver. Any notice required herein which is mailed by the petitioner, certified mail return receipt requested,

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shall be deemed to have been filed as of the date it is postmarked. This section shall apply to judicial review from the final order or action of all agencies, and amends the judicial review statutes relating to all agencies to provide a period of 30 days within which to appeal or to institute judicial review."

Accordingly,

"[s]ection 41-22-20(d) requires that the 'notice of appeal or review' be filed within 30 days of receiving notice of an agency's final action and requires that a 'petition for judicial review' be filed in the circuit court within 30 days of the filing of the notice of appeal or review."

Ex parte Alabama State Pers. Bd., 86 So. 3d at 996 (emphasis added). Furthermore, § 41-22-20(d) does not authorize a circuit court to extend the 30-day period for filing a notice of appeal.

"As we said in Lambert v. Alabama Real Estate Commission, 490 So. 2d 18 (Ala. Civ. App. 1986), the review procedure of the [AAPA] is in two parts. The first part requires that a notice of appeal be filed with the Agency within thirty days of its decision. § 41-22-20(d), [Ala.] Code 1975 (1987 Cum. Supp.). The second part requires that a petition for review be filed in the circuit court within thirty days of the filing of the notice of appeal. § 41-22-20(d), [Ala.] Code 1975 (1987 Cum. Supp.). This code section also authorizes the circuit court to extend the time for filing the review petition for a period not to exceed four months. However, section 41-22-20, [Ala.] Code 1975 (1987 Cum. Supp.), does not authorize an extension of time for filing the notice of appeal with the Agency."

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State Medicaid Agency v. Anthony, 528 So. 2d 326, 328 (Ala. Civ. App. 1988).

''[A] timely filing under § 41-22-20(d) is jurisdictional.'' Noland Health Servs., Inc. v. State Health Planning & Dev. Agency, 44 So. 3d 1074, 1080 (Ala. 2010) (quoting Krawczyk v. State Dep't of Public Safety, 7 So. 3d 1035, 1037 (Ala. Civ. App. 2008)). Section 41-22-20(d) requires Armstrong to have filed a notice of appeal with the agency within 30 days after receiving notice of the agency's decision to deny her request for a fair hearing and to have filed a petition for judicial review in the trial court.⁴ The materials submitted by the parties establish that Armstrong received notice of the agency's decision on May 21, 2019. Armstrong, thus, had until June 20, 2019, to file a notice of appeal with the agency. Armstrong filed only a complaint seeking judicial review with the trial court.

⁴Neither party asserts that the agency's decision was not a "final decision" pursuant to § 41-22-20. We note that, if the decision was not final, the trial court would not have obtained subject-matter jurisdiction. See Huntsville Hous. Auth. v. State of Alabama Licensing Bd. for Gen. Contractors, 179 So. 3d 146, 156 (Ala. Civ. App. 2014) (holding that a circuit court never acquired subject-matter jurisdiction in an appeal from an administrative agency's decision that was not final).

"This court has excused the failure of a party aggrieved by a final administrative decision to properly and timely file a notice of appeal with the agency that issued the decision when the party has served the agency with the petition for judicial review within the time allotted for filing the notice of appeal. See Eley v. Medical Licensure Comm'n of Alabama, 904 So. 2d 269 (Ala. Civ. App. 2003). The AAPA provides that a notice of appeal from a final decision issued by an administrative agency must be filed with the agency that made the final decision 'within 30 days after the receipt of the notice of or other service of the final decision of the agency upon the petitioner.' Ala. Code 1975, § 41-22-20(d)."

L.C. v. Shelby Cty. Dep't of Human Res., ___ So. 3d at ___.

Accordingly, serving an administrative agency with a petition or complaint for judicial review within 30 days of receipt of the notice of a final decision of the agency could serve as a substitute for a notice of appeal. The materials show, however, that the agency was served with Armstrong's complaint seeking judicial review on July 23, 2019, which is 63 days after the notification of the agency's decision was received.

Armstrong's response to the petition for a writ of mandamus does not address whether she timely filed a notice of appeal for the purpose of seeking judicial review. We conclude that the trial court lacked subject-matter jurisdiction in the case. Accordingly, we grant the agency's petition for a writ of mandamus and direct the trial court to enter an order

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granting the agency's motion to dismiss.⁵ We pretermitted discussion of the other arguments in the agency's mandamus petition.⁶

PETITION GRANTED; WRIT ISSUED.

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

⁵In its mandamus petition, the agency requests that this court direct the trial court to vacate its October 18, 2019, order. However, because the trial court never acquired subject-matter jurisdiction, its orders are void. See, e.g., Alabama Dep't of Corr. v. Montgomery Cty. Comm'n, 11 So. 3d 189, 193 (Ala. 2008) ("Because the circuit court never acquired subject-matter jurisdiction over this action, its orders and judgments are void . . .").

⁶The agency also argues that the allegations in Armstrong's complaint were insufficient to invoke the trial court's subject-matter jurisdiction and that Armstrong did not prove the factual predicates for the trial court's jurisdiction in light of the agency's factual challenge based on exhibits and affidavits attached to its motion to dismiss.