

SUPREME COURT OF ALABAMA

MPQ, Inc. v. Birmingham Realty Co.

78 So. 3d 391 (Ala. 2011) · No. 1091582; 1091588 · Decided August 12, 2011

SUMMARY

The Alabama Supreme Court dismissed an appeal and cross-appeal arising from an unlawful-detainer action between Birmingham Realty Company and MPQ, Inc. The court held that Birmingham Realty's notice of appeal from the district court was untimely because its post-judgment motion was filed outside the applicable seven-day period, depriving the circuit court of subject-matter jurisdiction and rendering its judgment void.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Wise; Woodall; Stuart; Parker; Shaw
JURISDICTION	Alabama
DECIDED	August 12, 2011
DOCKET	1091582; 1091588
DISPOSITION	dismissed
PROCEDURAL POSTURE	Consolidated appeals and cross-appeals arising from a commercial landlord's unlawful-detainer action and a separate rent action. The Supreme Court of Alabama reviewed the circuit court's judgment affirming dismissal of the unlawful-detainer action and dismissing counterclaims.
STANDARD OF REVIEW	Subject-matter jurisdiction was reviewed de novo and considered ex mero motu.
PRECEDENTIAL VALUE	published opinion
PARTIES	MPQ, Inc., d/b/a Freedom Enterprises, Marcus P. Quinn v. Birmingham Realty Company

TOPICS

[appellate jurisdiction](#)[subject matter jurisdiction](#)[appellate procedure](#)[landlord tenant](#)[civil procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Birmingham Realty's postjudgment motion was timely under Rule 59(dc), Alabama Rules of Civil Procedure, and therefore tolled the seven-day period for appealing the district court's unlawful-detainer judgment to the circuit court.
2. Whether the circuit court acquired subject-matter jurisdiction over Birmingham Realty's appeal from the district court when the notice of appeal was filed more than seven days after the district court's judgment.
3. What disposition was required when the circuit court judgment addressing the unlawful-detainer appeal was void for lack of subject-matter jurisdiction.

HOLDINGS

1. A postjudgment motion in an unlawful-detainer action must be filed within the seven-day period prescribed by Rule 59(dc), and an untimely motion does not toll the time for filing the notice of appeal.
2. The circuit court lacks subject-matter jurisdiction over an appeal from a district-court unlawful-detainer judgment when the notice of appeal is not filed within the statutory seven-day period.
3. A circuit-court judgment entered without subject-matter jurisdiction is void, and the appellate court must dismiss an appeal from that judgment with instructions to vacate it.

KEY QUOTATIONS

“jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.” (78 So. 3d at 393)

“The failure to file a timely notice of appeal is a jurisdictional defect that prevented the circuit court from acquiring jurisdiction over the appeal.” (78 So. 3d at 394)

“A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.” (78 So. 3d at 394)

FACTUAL BACKGROUND

Birmingham Realty and MPQ entered into a commercial lease, and Marcus P. Quinn signed an individual guaranty. After MPQ allegedly failed to pay rent, Birmingham Realty filed a circuit-court action seeking unpaid rent and an unlawful-detainer action in district court. The district court dismissed the unlawful-detainer action because the simultaneous actions violated Alabama's abatement statute.

PROCEDURAL HISTORY

Birmingham Realty filed a circuit-court action for unpaid rent and a separate district-court unlawful-detainer action. The district court dismissed the unlawful-detainer action under Alabama's abatement statute because the two actions were pending simultaneously. Birmingham Realty filed a postjudgment motion more than seven days after the district-court judgment and then appealed to the circuit court. The circuit court consolidated the

matters, entered an order addressing the claims, and later certified the order under Rule 54(b). The Supreme Court dismissed the appeals because the notice of appeal from the district court was untimely, leaving the circuit court without subject-matter jurisdiction and rendering its judgment void.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The circuit court was instructed to vacate its March 12, 2010, judgment insofar as it addressed the unlawful-detainer action.

CASES CITED

- Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)
- Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983)
- Marsh v. Marsh, 852 So. 2d 161, 163 (Ala. Civ. App. 2002)
- Kennedy v. Merrian, 963 So. 2d 86, 88 (Ala. Civ. App. 2007)
- Flannigan v. Jordan, 871 So. 2d 767, 770 (Ala. 2003)
- Shamburger v. Lamberi, 24 So. 3d 1139, 1142 (Ala. Civ. App. 2009)
- Smith v. Estes, 47 So. 3d 1251 (Ala. Civ. App. 2010)
- Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008)