

SUPREME COURT OF ALABAMA

Bon Harbor, LLC and Michael F. Hinds v. United Bank

20 So. 3d 1263 (Ala. 2009) · No. 1070902 and 1070994 · Decided April 10, 2009

SUMMARY

The Supreme Court of Alabama dismissed two appeals arising from a dispute over loans, guaranties, and related claims between Bon Harbor, Michael F. Hinds, and United Bank. The court held that the first appeal was taken from a nonfinal partial summary judgment because claims remained pending, and that the trial court lacked jurisdiction to enter a later order while the first appeal was pending. The later order was therefore void and could not support an appeal.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Cobb, Chief Justice; Smith, Justice; Parker, Justice; Shaw, Justice
JURISDICTION	Alabama
DECIDED	April 10, 2009
DOCKET	1070902 and 1070994
DISPOSITION	dismissed
PROCEDURAL POSTURE	Bon Harbor and Hinds appealed two summary-judgment orders entered in favor of United Bank. The Alabama Supreme Court reviewed whether either order was final and appealable and whether the trial court had jurisdiction to enter the second order while the first appeal was pending.
STANDARD OF REVIEW	Subject-matter jurisdiction is reviewed independently and cannot be waived; the court is not confined to the parties' jurisdictional arguments.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Bon Harbor, LLC, Michael F. Hinds v. United Bank

TOPICS

- appellate jurisdiction
- final judgment rule
- subject matter jurisdiction
- summary judgment
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

contracts

QUESTIONS PRESENTED

1. Whether the March 20, 2008, summary-judgment order was a final, appealable judgment when it did not dispose of Bon Harbor and Hinds's counterclaim.
2. Whether the trial court had jurisdiction to enter the March 25, 2008, order purporting to dispose of the counterclaim while the appeal from the March 20 order was pending.
3. Whether either appeal could be maintained when the underlying order was nonfinal or void.

HOLDINGS

1. A trial court's order is generally not final for purposes of appeal unless it disposes of all claims as to all parties, subject to the Rule 54(b) exception. A partial summary judgment that leaves claims pending is not a final, appealable judgment absent a proper Rule 54(b) determination.
2. After an appeal is taken, the trial court lacks jurisdiction to act concerning a matter involved in the appeal and subject to adjudication by the appellate court. An order entered without subject-matter jurisdiction is void.
3. A void order or judgment will not support an appeal.

KEY QUOTATIONS

"The general rule is that a trial court's order is not final [for purposes of appeal] unless it disposes of all claims as to all parties." (1265)

"Jurisdiction of a case can be in only one court at a time." (1266)

"Any action taken by a trial court without subject-matter jurisdiction is void." (1266)

"Finally, of course, a void order or judgment will not support an appeal." (1266)

FACTUAL BACKGROUND

United Bank loaned money to Bon Harbor, LLC, which used the funds to purchase real estate, and Michael F. Hinds executed continuing guaranties concerning Bon Harbor's indebtedness. The Bank sued Bon Harbor, Hinds, and other alleged guarantors for breach of a promissory note and guaranties, later seeking additional relief. Bon Harbor and Hinds filed a counterclaim against the Bank and three employees alleging breach of duty, fraud, and fraudulent suppression. The Bank's summary-judgment motion addressed only the Bank's contract claims and did not address the counterclaim.

PROCEDURAL HISTORY

United Bank sued Bon Harbor, Hinds, and other alleged guarantors over indebtedness arising from real-estate financing transactions. After the pleadings were amended and Bon Harbor and Hinds filed a counterclaim alleging breach of duty, fraud, and fraudulent suppression, the trial court entered a March 20, 2008, summary

judgment that did not address the counterclaim. Bon Harbor and Hinds appealed, and while that appeal was pending the trial court entered a second, more detailed order purporting to dispose of the counterclaim. The Supreme Court of Alabama dismissed both appeals.

DISPOSITION

dismissed

CASES CITED

- Riley v. Hughes, 17 So. 3d 643, 648-649 (Ala. 2009)
- Dickerson v. Alabama State University, 852 So. 2d 704, 705 (Ala. 2002)
- Baugus v. City of Florence, 968 So. 2d 529, 533 (Ala. 2007)
- Reynolds v. Colonial Bank, 874 So. 2d 497, 503 (Ala. 2003)
- Foster v. Greer & Sons, Inc., 446 So. 2d 605, 608 (Ala. 1984)
- Ex parte Andrews, 520 So. 2d 507 (Ala. 1987)
- Gallagher Bassett Services, Inc. v. Phillips, 991 So. 2d 697, 701 (Ala. 2008)

OPINION

WOODALL, J.

20 So.3d 1263 (2009) BON HARBOR, LLC, and Michael F. Hinds v. UNITED BANK 1070902 and 1070994. Supreme Court of Alabama. April 10, 2009. *1264 H. William Wasden, Edward G. Bowron, and D. Charles Holtz of Burr Forman LLP, Mobile, for appellants. Edward A. Dean, Christopher I. Gruenewald, and Andrew W. Martin, Jr., of Armbrecht Jackson LLP, Mobile, for appellee.

WOODALL, Justice. Bon Harbor, LLC, and Michael F. Hinds appeal from two orders entered *1265 against them in an action commenced by United Bank ("the Bank"). We dismiss their appeals. The underlying dispute arose following a series of transactions by which Bon Harbor received money from the Bank that Bon Harbor used to purchase certain real estate in Baldwin County.

During these transactions, Hinds, one of Bon Harbor's general managers, executed several continuing-guaranty agreements by which he assumed certain responsibilities for Bon Harbor's indebtedness to the Bank. The details of these transactions and documents are not relevant to our decision.

On April 5, 2007, the Bank sued Bon Harbor and Hinds, as well as three other alleged guarantors of Bon Harbor's indebtedness to the Bank. The complaint alleged that Bon Harbor and Hinds had breached a promissory note and a guaranty, respectively.

After Bon Harbor and Hinds answered the complaint, the Bank amended the complaint to assert claims seeking relief under multiple theories and to request, among other things, a declaration that the note and guaranty were valid and enforceable.

On July 13, 2007, Bon Harbor and Hinds answered the amended complaint and filed a counterclaim against the Bank and three of its employees Frank Meigs, Jamie Lipham, and Russell Banks. The counterclaim alleged that the Bank and its employees were guilty of breach of duty, fraud, and fraudulent suppression and demanded damages related to those claims. Further, the counterclaim sought a judgment declaring the Bank's rights, if any, under the various transactional documents.

The Bank and its employees answered the counterclaim, denying any liability. On January 4, 2008, the Bank filed a motion for a summary judgment. Although its employees were identified as movants, the motion never mentioned the counterclaim or the causes of action alleged in it. Instead, the motion argued only that Bon Harbor and the guarantors, including Hinds, were contractually liable to the Bank as a matter of law.

Thus, the motion can only be construed as a motion for a partial summary judgment. On March 20, 2008, the trial court granted the summary-judgment motion, giving no explanation. On that same day, Bon Harbor and Hinds filed their first notice of appeal to this Court.

The appeal was docketed as case no. 1070902. On March 25, 2008, the trial court purported to enter a second order granting the Bank's motion for a summary judgment. This order was more detailed than the March 20 order and, among other things, purported to enter a summary judgment for the Bank and its employees on the counterclaim.

On April 11, 2008, Bon Harbor and Hinds filed a second notice of appeal to this Court. The appeal was docketed as case no. 1070994. The parties do not question the subject-matter jurisdiction of this Court. However, we "are not confined to the arguments of the parties in our subject-matter-jurisdiction analysis because subject-matter jurisdiction cannot be waived by the failure to argue it as an issue."

Riley v. Hughes, 17 So.3d 643, 648 (Ala.2009). It is clear that this Court does not have subject-matter jurisdiction over either appeal filed by Bon Harbor and Hinds. "The general rule is that a trial court's order is not final [for purposes of appeal] unless it disposes of all claims as to all parties." Dickerson v. Alabama State Univ., 852 So.2d 704, 705 (Ala.2002). *1266 "The one exception is that where the court has completely disposed of one of a number of claims, or one of multiple parties, and has made an express determination that there is no just reason for delay, the court may direct the entry of judgment on that claim or as to that party."

Committee Comments on 1973 Adoption of Rule 54(b), Ala. R. Civ. P. Consequently, standing alone, "[a] partial summary judgment is not a final, appealable judgment." Baugus v. City of

Florence, 968 So.2d 529, 533 (Ala.2007).

As previously discussed in this opinion, the trial court's bare-bones order of March 20, 2008, granted what can only be construed as a motion for a partial summary judgment. That order left pending, at the very least, Bon Harbor and Hinds's counterclaim, which was not mentioned, much less challenged, in the Bank's summary-judgment motion. Consequently, their appeal in case no. 1070902 must be dismissed, because it is not supported by a final, appealable judgment.

While Bon Harbor and Hinds's appeal from the March 20 order was pending in this Court, the trial court purported to enter another order granting the Bank's summary-judgment motion, specifically including the counterclaim within the scope of its ruling.

However, the trial court was without jurisdiction to enter the order, and, thus, the order is void. "Jurisdiction of a case can be in only one court at a time." *Reynolds v. Colonial Bank*, 874 So.2d 497, 503 (Ala.2003). Consequently, after an appeal is taken, the trial court "can do nothing in respect to any matter or question which is involved in the appeal, and which may be adjudged by the appellate court."

Foster v. Greer & Sons, Inc., 446 So.2d 605, 608 (Ala.1984)(overruled by *Ex parte Andrews*, 520 So.2d 507 (Ala. 1987), to the extent *Foster* held that filing a notice of appeal ousts the trial court of jurisdiction to consider a timely filed postjudgment motion). "Any action taken by a trial court without subject-matter jurisdiction is void." *Riley*, 17 So.3d at 649.

Finally, of course, "a void order or judgment will not support an appeal." *Gallagher Bassett Servs., Inc. v. Phillips*, 991 So.2d 697, 701 (Ala.2008). For these reasons, Bon Harbor and Hinds's appeal in case no. 1070994 must also be dismissed. 1070902 APPEAL DISMISSED. 1070994 APPEAL DISMISSED. COBB, C.J., and SMITH, PARKER, and SHAW, JJ., concur.