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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Kathryn L. Honea

v.

Raymond James Financial Services, Inc., and Bernard Michaud

Appeal from Jefferson Circuit Court
(CV-06-1896)

SHAW, Justice.

The plaintiff below, Kathryn L. Honea, purports to appeal from a judgment in favor of Raymond James Financial Services, Inc. ("Raymond James"), and Bernard Michaud, an employee of Raymond James (hereinafter referred to collectively as

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"RJFS"), in the underlying action seeking to vacate an arbitration award. For the reasons stated below, we dismiss the appeal.

Facts and Procedural History

This is the fourth time this case has been before us. See Raymond James Fin. Servs., Inc. v. Honea, 55 So. 3d 1161 (Ala. 2010) ("Raymond James I"); Raymond James Fin. Servs., Inc. v. Honea, 141 So. 3d 1012 (Ala. 2013) ("Raymond James II"); and Honea v. Raymond James Fin. Servs., Inc., 240 So. 3d 550 (Ala. 2017) ("Raymond James III"). In 1997, Honea opened several investment accounts with Raymond James. In March 2006, Honea sued RJFS alleging that her accounts had been mismanaged. She sought damages for breach of contract, breach of fiduciary duty, negligence, wantonness, fraud, and violations of the Alabama Securities Act. The case went to arbitration. An arbitration panel entered an award in favor of RJFS, and on January 14, 2008, Honea filed in the trial court a motion to vacate that arbitration award. See Horton Homes, Inc. v. Shaner, 999 So. 2d 462, 467 (Ala. 2008) (discussing the process for appealing an arbitration award under Ala. Code 1975, § 6-6-15, and noting, among other

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things, that "[a] party seeking review of an arbitration award is required to file a motion to vacate" that award). Honea further requested that, pursuant to a provision in the arbitration agreement, the trial court conduct a "de novo review" of the arbitration award. In response, the trial court vacated the award and scheduled a future status conference for the purpose of setting the matter for trial.

RJFS appealed from the order vacating the award. In Raymond James I, this Court reversed the trial court's order and remanded the case for the trial court to conduct, pursuant to the provision in the arbitration agreement, a de novo review of the transcript and exhibits of the arbitration hearing and to enter a judgment based on that review. Raymond James I, 55 So. 3d at 1170.

On remand, the trial court conducted a de novo review of the arbitration award, again vacated the award, and entered a judgment in favor of Honea. RJFS again appealed to this Court. In Raymond James II, this Court held that the trial court lacked jurisdiction because the arbitration award had not been entered as a judgment of the court, and it vacated the trial court's judgment as void, noted that a void judgment

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would not support an appeal, and dismissed the appeal. Raymond James II, 141 So. 3d at 1014-15.

Following this Court's decision in Raymond James II, the circuit clerk entered the arbitration award as a judgment of the trial court. Honea filed a notice of appeal seeking review of the award pursuant to Rule 71B, Ala. R. Civ. P.¹ In Raymond James III, this Court held that Honea's motion to vacate the award had been denied by operation of law under Rule 59.1, Ala. R. Civ. P. 240 So. 3d at 562. That denial was affirmed by this Court except in respect to certain claims. Specifically, this Court held that Honea was entitled, under Rule 59(g), Ala. R. Civ. P., to a hearing in regard to potential breach-of-contract claims concerning conduct that allegedly occurred after March 2000. Without expressing any opinion on the substantive merit of those particular claims, 240 So. 3d at 568 n.9, this Court reversed the trial court's judgment in part and remanded the case for

¹Rule 71B, governing appeals from arbitration awards, became effective on February 1, 2009, and superseded the procedures found in § 6-6-15, Ala. Code 1975. See Committee Comments to Rule 71B. That rule requires the filing of a notice of appeal in the trial court.

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the trial court to conduct a Rule 59(g) hearing on those identified claims. 240 So. 3d at 568.

On remand, Honea filed in the trial court on August 3, 2017, another motion to vacate the arbitration award. This motion will be referred to as "the 2017 motion to vacate." She argued in the 2017 motion to vacate that in Raymond James III this Court held that Honea's claims were not barred by the statute of limitations. According to Honea, because the trial court had previously conducted a de novo review of the arbitration award on remand following Raymond James I, vacated the award, and entered a judgment in her favor, the trial court should reenter that judgment.

The trial court subsequently held a hearing. It is clear from the transcript of the hearing that the trial judge did not yet intend for the hearing to be one pursuant to Rule 59(g) or one to otherwise resolve the issues identified in this Court's remand mandate.²

²Instead, it appears that the trial judge, who was newly assigned the case, intended the hearing as one for the parties to clarify the issues before the court. That intent is understandable given the long, complicated history of the case and its recent assignment to the trial judge.

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On November 11, 2017, Honea filed a notice of appeal, once again bringing this case before this Court. It appears that this appeal anticipated that the 2017 motion to vacate had been denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P., and that an appeal was required.

Discussion

On appeal, Honea contends that the 2017 motion to vacate was simply a "repetitive filing" that raised no new grounds and should not be considered a new motion that would be susceptible to denial by operation of law under Rule 59.1. Thus, she concedes, there is no final judgment to support her appeal, and the appeal should be dismissed. See Jakeman v. Lawrence Grp. Mgmt. Co., 82 So. 3d 655, 659 (Ala. 2011) (holding that a nonfinal judgment "will not support an appeal"). On the other hand, RJFS argues that the 2017 motion to vacate raised new, nonmeritorious issues; thus, it maintains that it was an entirely new motion to vacate that was properly deemed denied by operation of law under Rule 59.1. We agree that the 2017 motion to vacate raises new grounds; however, because of that fact, as discussed below, consideration of the motion is beyond the scope of the trial

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court's jurisdiction and requires that this appeal be dismissed.

An appellate court's decision is final as to the matters before it, becomes the law of the case, and must be executed according to the mandate. Ex parte Edwards, 727 So. 2d 792, 794 (Ala. 1998). Generally, a lower court "exceeds its authority" by addressing issues already decided by an appellate court's decision in that case. Lynch v. State, 587 So. 2d 306, 308 (Ala. 1991). In Anderson v. State, 796 So. 2d 1151, 1156 (Ala. Crim. App. 2000) (opinion on return to remand), the Alabama Court of Criminal Appeals held that a trial court's order on remand that exceeded the scope of the appellate court's remand order "exceeded [the trial court's] jurisdiction" and was "a nullity." See also Ellis v. State, 705 So. 2d 843, 847 (Ala. Crim. App. 1996) (on application for rehearing on second return to remand) ("[T]he trial court had no jurisdiction ... to take any action beyond the express mandate of this court."), and Peterson v. State, 842 So. 2d 734, 740 (Ala. Crim. App. 2001) (opinion on return to third remand) (holding that a trial court "did not have jurisdiction" to enter an order that exceeded the scope of the

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appellate court's remand order and that, therefore, its order was "void"). Similarly, in Ex parte DuBose Construction Co., 92 So. 3d 49, 58 (Ala. 2012), this Court held that an order by a trial court that was outside the scope of an appellate mandate was void.

In Raymond James III, portions of the denial by operation of law of Honea's Rule 71B, Ala. R. Civ. P., motion to vacate the arbitration award, which this Court said was "treated no differently from an express, deliberate order ... denying the motion," were affirmed. However, this Court held that the trial court erred in allowing certain other claims, which we explicitly designated, to be denied by operation of law without first conducting a hearing on those claims as required by Rule 59(g). Thus, the judgment was reversed in part and the case remanded for the trial court to conduct a Rule 59(g) hearing on those designated claims before ruling on the appeal. The scope of our appellate mandate, which the trial court has not yet had the opportunity to carry out, is so limited.

Honea's 2017 motion to vacate interjects issues and seeks relief beyond the scope of the remand action ordered in

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Raymond James III, which directed a Rule 59(g) hearing. The trial court would have no jurisdiction to rule on it, and any ruling, whether express or a denial by operation of law, would be void. Cf. Ex parte Queen, 959 So. 2d 620, 622 (Ala. 2006) ("[A] trial court does not have the authority to reopen for additional testimony a case that has been remanded to it, except where expressly directed to do so."), and Ex parte Progressive Specialty Ins. Co., 31 So. 3d 661, 663 (Ala. 2009) ("Rule 15, Ala. R. Civ. P., which allows amendments to pleadings, did not allow a complaint to be amended on remand when the appellate mandate, which did not permit such an amendment, amounted to a final adjudication of the case."). Thus, for all intents and purposes, the 2017 motion to vacate is a nullity, and denial of it by operation of law would have no effect. Such a void judgment will not support this appeal. Parham v. American Bankers Ins. Co. of Fla., 24 So. 3d 1102, 1104 (Ala. 2009). Further, because the trial court has not yet had the opportunity to fulfill this Court's mandate in Raymond James III and the issues underlying it remain pending, there is no final judgment to support an appeal. Jakeman, supra. Therefore, this appeal is due to be dismissed. The trial

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court retains jurisdiction as directed in Raymond James III to hold a Rule 59(g) hearing on the remaining claims designated in that opinion. It must then conduct a de novo review of the arbitration award as to those claims.

APPEAL DISMISSED.

Stuart, C.J., and Bolin, Parker, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.