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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Brittony Mays

v.

Trinity Property Consultants, LLC

**Appeal from Shelby Circuit Court
(CV-18-99)**

MOORE, Judge.

Brittony Mays appeals from an order of the Shelby Circuit Court ("the circuit court") dismissing her appeal from an order entered by the Shelby District Court ("the district court") denying her Rule 60(b)(4), Ala. R. Civ. P., motion to

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set aside a default judgment entered against her in an eviction and unlawful-detainer action. We affirm.

Relevant Procedural History

On January 24, 2018, Trinity Property Consultants, LLC, filed in the district court a "Statement of Claim" for "Eviction/Unlawful Detainer" against Mays. Trinity Property demanded possession of certain property located in Birmingham, as well as "3556.67 plus court costs ... consisting of unpaid rent and late charges, plus attorney's fees (if applicable) and other charges." Proof of service upon Mays was filed on January 26, 2018.

On February 2, 2018, Trinity Property filed an application for the entry of a default judgment against Mays. On February 5, 2018, the district court entered a default judgment in favor of Trinity Property and against Mays. That judgment provided, in part:

"This case came before the Court on [Trinity Property's] application for default judgment on the Unlawful Detainer possession count of the complaint. [Trinity Property] is entitled to possession as claimed in the complaint and default is hereby entered and default judgment is hereby entered in favor of [Trinity Property] and against [Mays] on the Unlawful Detainer [count]. The Court hereby orders and adjudges that the ... property ... be restored to [Trinity Property].

". . . .

"Rent is ascertained to be \$925.00 per month due on the 1st of the month. Rent in the amount of \$925.00 has accrued since date of filing to date. Pursuant to Rule 54(b) [, Ala. R. Civ. P.,] and in order to make this a final order, the Court specifically finds that there is no just reason for delay and specifically directs the immediate entry of judgment as to [Mays] for property sued for and costs of court with leave to prove damages against [Mays] on the money claim."

On February 22, 2018, Mays filed in the district court a Rule 60(b)(4) motion seeking to set aside the default judgment (see Rule 60(dc), Ala. R. Civ. P.), alleging that she had not been served with the complaint in the action. That motion was denied on February 27, 2018.

On March 5, 2018, Mays filed her notice of appeal to the circuit court. On March 12, 2018, Trinity Property moved the circuit court to dismiss the appeal because, it asserted, it had been untimely filed. On March 21, 2018, the circuit court dismissed Mays's appeal.

On March 27, 2018, Mays filed in the circuit court a "motion to reinstate appeal and [to] stay execution," which we construe as a motion filed pursuant to Rule 59(e), Ala. R. Civ. P. See Larkin v. American Eastern Surety Ins. Co., 979 So. 2d 835, 838 (Ala. Civ. App. 2007); and Ryans v. State ex

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rel. Stoudemire 963 So. 2d 95, 96 (Ala. Civ. App. 2007). On May 2, 2018, Trinity Property filed an affidavit of Dale C. Stave, in which Stave averred, in part:

"1. I am a process server in Shelby County, Alabama.

"2. I have been serving Unlawful Detainer actions for over 20 years.

"3. On the 25th day of January, 2018, I served a copy of the Unlawful Detainer Summons and Complaint to [Mays] at the address listed on the Summons.

"4. In accordance with Ala. Code [1975,] § 35-9A-461(c), I knocked on the door, after I did not receive a response, I posted a copy of the Summons and Complaint on the door, then placed a stamped copy in the first class mail to the same address on the 25th of January, 2018."¹

¹Because the appeal from the district court to the circuit court was for a trial de novo, Stave's affidavit could be introduced to the circuit court. See Casey v. Bingham, [Ms. 2170045, May 11, 2018] ___ So. 3d ___, ___ (Ala. Civ. App. 2018) (quoting Crews v. Jackson, 218 So. 3d 368, 370-71 (Ala. Civ. App. 2016), quoting in turn Peterson v. Woodland Homes of Huntsville, Inc., 959 So. 2d 135, 139 (Ala. Civ. App. 2006)) ("'"'"Alabama cases have consistently held that a trial de novo means an entirely new trial, 'as if no trial had ever been had, and just as if it had originated in the circuit court.' Cloverleaf Land Co. v. State, 276 Ala. 443, 163 So. 2d 602 (1964)."' State v. Reynolds, 887 So. 2d 848, 853 (Ala. 2004) (quoting Ex parte Palughi, 494 So. 2d 404, 408 (Ala. 1986)). 'A trial de novo ... means "trying anew the matters involved in the original hearing as if they had not been heard before and as if no decision had been previously entered."' Neal v. First Alabama Bank of Huntsville, N.A., 440 So. 2d

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On May 3, 2018, Mays filed a supplement to her Rule 59(e) motion. On May 4, 2018, Trinity Property filed a response to Mays's motion.

On June 4, 2018, the circuit court entered an order denying Mays's Rule 59(e) motion. On June 19, 2018, Mays filed her notice of appeal to this court.

Discussion

On appeal, Mays argues that she was entitled to relief under Rule 60(b)(4) because, she says, the default judgment entered by the district court was void because she was not properly served. She specifically argues that service by posting on the door of the property, which is her residence, was improper because, she says, Trinity Property failed to make a reasonable effort to serve Mays and because Mays was residing on the property.²

1111, 1112 (Ala. Civ. App. 1983) (quoting Rudolph v. State, 286 Ala. 189, 190, 238 So. 2d 542, 543 (1970)) (emphasis omitted).''').

²Trinity Property argues in its brief to this court that Mays raised this specific argument for the first time in her appeal to the circuit court. However, "[f]ailure of proper service under Rule 4[, Ala. R. Civ. P.,] deprives a court of jurisdiction and renders its judgment void." Ex parte Pate, 673 So. 2d 427, 428-29 (Ala. 1995). "[T]he absence of jurisdiction may be raised for the first time on appeal."

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Section 35-9A-461(c), Ala. Code 1975, which specifically applies to "[a] landlord's action for eviction, rent, money damages, or other relief," § 35-9A-461(a), provides:

"Service of process shall be made in accordance with the Alabama Rules of Civil Procedure. However, if a sheriff, constable, or process server is unable to serve the defendant personally, service may be had by delivering the notice to any person who is sui juris residing on the premises, or if after reasonable effort no person is found residing on the premises, by posting a copy of the notice on the door of the premises, and on the same day of posting or by the close of the next business day, the sheriff, the constable, the person filing the complaint, or anyone on behalf of the person, shall mail notice of the filing of the unlawful detainer action by enclosing, directing, stamping, and mailing by first class a copy of the notice to the defendant at the mailing address of the premises and if there is no mailing address for the premises to the last known address, if any, of the defendant and making an entry of this action on the return filed in the case. Service of the notice by posting shall be complete as of the date of mailing the notice."

(Emphasis added.) See also Ala. Code 1975, § 6-6-332(b) (providing substantially the same with regard to unlawful-detainer actions).

In Gaudin v. Collateral Agency, Inc., 624 So. 2d 631, 633 (Ala. Civ. App. 1993), this court reasoned:

Reynolds v. Colonial Bank, 874 So. 2d 497, 503 (Ala. 2003). Thus, we determine this issue to have been properly raised before this court.

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"We recognize that in unlawful detainer actions, after a complaint is filed, notice may be served on a defendant, who the sheriff or constable cannot personally serve. A copy of the notice can be delivered to any person residing on the premises or by posting a copy of the notice on the door of the premises and by mailing the notice by first class mail to the defendant. The parties stipulated that copies of the complaint were posted on the premises and that a copy also was mailed to Gaudin by first class mail. Clearly, service was proper pursuant to § 6-6-332"

In this case, Stave, the process server, averred in his affidavit that he had "knocked on the door, [and that,] after [he] did not receive a response, [he] posted a copy of the Summons and Complaint on the door, then placed a stamped copy in the first class mail to the same address." Like in Gaudin, service was proper in the eviction and unlawful-detainer action pursuant to § 6-6-332(b) and § 35-9A-461(c).

Mays argues, however, that Stave's action of knocking on the door of her residence did not constitute "reasonable effort." Mays cites several cases concerning the requirements that must be met before a person can be served by publication pursuant to Rule 4.3, Ala. R. Civ. P. However, Rule 4.3 specifically requires a showing that the defendant is avoiding service before service by publication is made. Sections 6-6-332(b) and 35-9A-461(c) do not require a showing that a

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defendant is avoiding service. Those Code sections require only that "reasonable effort" to personally serve the defendant be made before "posting a copy of the notice on the door of the premises and by mailing the notice by first class mail to the defendant." Gaudin, 624 So. 2d at 633. "Reasonable" is defined, in part, as "being in accordance with reason," "not extreme or excessive," and "moderate, fair." Merriam-Webster's Collegiate Dictionary 1037 (11th ed. 2003). Considering those definitions, we conclude that Stave's action of personally knocking on the door of Mays's residence was "reasonable" and that he was not required to use "extreme" measures in order to personally serve Mays.

Mays also argues that she was residing on the property at the time Stave attempted to serve her. However, the statutory language states that, "if after reasonable effort no person is found residing on the premises," a defendant may be served by posting a copy of the summons and complaint on the door of the premises and by sending a copy of the summons and complaint to the defendant by first-class mail. Mays does not point to any evidence indicating that Stave "found [her] residing on the

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premises." Therefore, we conclude that Mays's argument on this point is without merit.

Conclusion

Having determined Mays's arguments to be insufficient to show that service on her was improper and that, therefore, she was entitled to Rule 60(b)(4) relief from the district court's judgment against her on Trinity Property's eviction and unlawful-detainer claims, and Mays having asserted no arguments to this court regarding the circuit court's dismissal of her appeal to that court on the basis that it was untimely filed, we affirm the circuit court's judgment.

Trinity Property's request for an attorney's fee on appeal is denied.

AFFIRMED.

Thompson, P.J., and Pittman, Thomas, and Donaldson, JJ., concur.