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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Muhammad Wasim Sadiq Ali

v.

Mike Williamson

Appeal from Jefferson Circuit Court  
(CV-14-900197)

STEWART, Justice.

This case challenges a default judgment entered by the Jefferson Circuit Court ("the trial court") against Muhammad Wasim Sadiq Ali and others in favor of Mike Williamson after a case ordered to private arbitration was remanded to the

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trial court. Ali contends that the default judgment is void because, he says, the trial court lacked personal jurisdiction over him. We agree, and we reverse and remand.

#### Facts and Procedural History

On January 10, 2014, Williamson filed a complaint in the trial court against RPM Cranes, LLC ("RPM"), asserting claims of breach of contract, unjust enrichment, conversion, unreasonable restraint of trade, and misrepresentation arising from his alleged ownership of, his employment with, and the termination of that employment with RPM.<sup>1</sup> The complaint contained the following factual allegations. Williamson, Patrick Watson, Ali, and others formed RPM, a regional supplier of rental cranes based in Birmingham, in 2008. Williamson was employed as RPM's general manager. Ali was the primary investor and majority owner of RPM, and Ali and Watson allegedly represented to Williamson at the time RPM was formed that Williamson would own a 12% share of the company. In 2012, Watson and Ali told Williamson that, in order to accrue his 12% equity interest in RPM at the end of his five-year employment term, he needed to pay \$1,000,000, and that, if

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<sup>1</sup>According to the case-action summary, RPM was served by certified mail.

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Williamson could not pay, his employment would be terminated unless he signed an employment agreement. On March 27, 2012, Williamson signed an employment agreement with RPM. The agreement contained an arbitration clause, which provided, in part, that "[a]ny disputes arising under or in connection with this Agreement will be resolved by final and binding arbitration in Birmingham, Alabama, in accordance with the rules and procedures of the American Arbitration Association." The employment agreement also contained a noncompetition clause that prohibited Williamson, for two years following the termination of his employment with RPM, from competing with RPM and from being employed by any business that is in competition with RPM. In 2013, a dispute between Williamson and RPM arose concerning Williamson's insurance coverage with respect to RPM vehicles, and Watson instructed Williamson to obtain an insurance policy in the amount of \$5,000,000 naming RPM as an additional insured. On May 13, 2013, RPM terminated Williamson's employment "for cause," citing his failure to obtain an appropriate certificate of insurance. Ali and Watson were not named as defendants in Williamson's original complaint. On February 18, 2014, RPM filed a motion in the trial court to stay the proceedings and to compel arbitration

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of all claims asserted against it by Williamson. The trial court entered an order granting RPM's motion and staying the trial-court proceedings pending the outcome of the arbitration proceedings.

On November 7, 2014, Williamson filed a document in the arbitration proceedings titled "amended claim," in which Williamson purported to add Ali and Watson as opposing parties in the arbitration proceedings and to assert the same claims against them that he asserted against RPM in the original complaint. RPM's attorney agreed to accept service of the amended claim in the arbitration proceedings on behalf of Ali and Watson. RPM, Ali, and Watson filed an answer in the arbitration proceedings, and they also filed a counterclaim in the arbitration proceedings against Williamson, asserting claims of breach of fiduciary duty, breach of contract, and tortious interference with business relations. On June 23, 2015, RPM filed in the trial court a notice of filing of bankruptcy, and the trial court later granted RPM's counsel's motion to withdraw as counsel. According to the submissions of the parties in the trial court, the United States Bankruptcy Court for the Northern District of Alabama

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dismissed RPM's bankruptcy petition on February 10, 2016, without granting RPM a discharge.

On July 28, 2016, Williamson filed a motion in the arbitration proceedings requesting the arbitrator to dismiss the arbitration proceedings and to remand the case back to the trial court, stating that RPM, Ali, and Watson had abandoned the arbitration proceedings and had failed to defend the claims asserted against them. In that motion, Williamson stated that on April 13, 2016, the United States District Court for the Northern District of Alabama sentenced Ali to 36 months' incarceration in a federal penitentiary for an unrelated criminal conviction. On August 23, 2016, the arbitrator granted Williamson's motion, stating that "this arbitration proceeding is hereby dismissed for failure of [RPM, Ali, and Watson] to engage in the arbitration proceedings at the instance of [RPM]. This case is therefore remanded to the Circuit Court." The arbitrator's order was not filed with the trial court until it was submitted as an exhibit to a motion filed by Williamson on March 22, 2017.

On February 15, 2017, Williamson filed a motion in the trial court for a default judgment against RPM, Ali, and Watson. Ali and Watson were not listed as defendants in the

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trial-court action when Williamson filed the motion.

Nonetheless, Williamson asserted in his motion that,

"[s]ince the referral [to arbitration],[RPM, Ali, and Watson] have willfully failed to engage in the litigation process. Moreover, [RPM, Ali, and Watson] have made no effort to retain any new counsel to defend them in these proceedings. Finally, [RPM, Ali, and Watson] have failed to appear before this Court at any scheduled status conference hearing. Thus, it appears that [RPM, Ali, and Watson] do not intend to defend [Williamson's] claims in the instant proceedings. Accordingly, default judgment is due to be entered against [RPM, Ali, and Watson]."

On March 21, 2017, the trial court entered a default judgment against RPM, Ali, and Watson and in favor of Williamson in the amount of \$1,000,000. On the same day, the trial court entered an order vacating its default judgment without explanation.

On March 22, 2017, Williamson filed a motion in the trial court seeking to "correct the circuit clerk's record in accordance with [the] remanded arbitration proceedings." In that motion, Williamson sought to add Ali and Watson as defendants in the trial-court proceedings on the grounds that Ali and Watson had been served with the amended claim in the arbitration proceedings and had appeared in the matter by filing an answer in the arbitration proceedings. On March 23, 2017, the trial court entered an order directing the circuit

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clerk to add Ali and Watson as defendants in the trial-court case. According to the case-action summary, the circuit-court clerk, pursuant to the trial court's order, added Ali and Watson as parties on March 24, 2017; however, in the party-information portion of the case-action summary, the address fields for Ali and Watson were left blank. Nothing in the record indicates that service of process was attempted on Ali or Watson after the entry of the trial court's March 23, 2017, order. On March 28, 2017, at 9:14 a.m., Williamson filed an amended complaint with the trial court adding Ali and Watson as defendants. The amended complaint mirrored the amended claim Williamson had filed in the arbitration proceedings in 2014. On the same day at 9:15 a.m., Williamson filed a motion in the trial court seeking permission to serve Ali and Watson with the amended complaint by publication pursuant to Rule 4.3, Ala. R. Civ. P. In support of the motion, Williamson attached the affidavit of his attorney, Joseph P. Schilleci, Jr., which included the following averments:

"1. Each of the defendants [was] originally served with process for the amended complaint filed against them in the prior arbitration proceedings of this case. Moreover, each of the defendants answered said amended claim at that time. However, since those events, the defendants have each refused

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to participate in this litigation both at arbitration and before this court.

". . . .

"3. In addition, in 2015, the United States government charged [Ali] with multiple charges that resulted in him pleading guilty and receiving a sentence of 36 months incarceration. [Ali] is currently an inmate in the United States Penitentiary in Atlanta, Georgia . . . .

". . . .

"5. In light of the foregoing circumstances, especially considering that . . . the defendants have all previously been apprised of the existence of and nature of this litigation, further attempts to obtain personal service against them will only be met by continued efforts to evade service. Accordingly, service of the amended complaint by publication in the proceedings before the Circuit Court is necessary."

The trial court entered an order granting Williamson's motion on March 29, 2017. Although the trial court permitted Williamson to serve Ali and Watson by publication, there is no proof in the record that the notice was ever published. See Rule 4.3(d)(5), Ala. R. Civ. P.

On May 19, 2017, Watson filed a motion to dismiss the amended complaint on the ground that it failed to state a claim upon which relief could be granted as to him. The trial court set the matter for a hearing on August 4, 2017, although there is no indication in the record that Ali received notice



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of the hearing. The trial court entered an order on August 23, 2017, denying Watson's motion to dismiss. The trial court concluded that

"Watson, as well as ... Ali and RPM, were named as party defendants to the amended [claim] and then were properly served with process, answered and defended the amended [claim] at the arbitration phase of this case until they abandoned that defense. This history has become the law of the case and is not subject to re-litigation."

In the same order, the trial court also concluded that the amended complaint did not need to be served and that the default-judgment order that it had entered on March 21, 2017, "should be restored immediately." Accordingly, it entered a default judgment against RPM, Watson, and Ali, awarding Williamson \$1,000,000 against the three defendants jointly and severally.

On September 22, 2017, Ali filed a motion to set aside the default-judgment order. Ali argued that he was not served with Williamson's March 28, 2017, amended complaint; that Williamson did not follow the proper procedures for service by publication; that the default judgment was entered without having provided notice of the default-judgment hearing to Ali; and that, although he had participated in the arbitration proceedings, he was not a party to the trial-court action.

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Although Ali's motion to set aside the default judgment was filed within 30 days of the entry of the default judgment as required by Rule 55(c), Ala. R. Civ. P., we construe Ali's motion to be one requesting the trial court to set aside a void judgment pursuant to Rule 60(b)(4), Ala. R. Civ. P. Hughes v. Cox, 601 So. 2d 465, 467 n.3 (Ala. 1992) ("Insofar as [a motion to set aside a default judgment] argued that the default judgment was void we will construe it as a motion under Rule 60(b)(4), Ala. R. Civ. P.; insofar as it sought to have the default judgment set aside on other grounds, we will construe it as a motion under Rule 55(c), Ala. R. Civ. P."). Accordingly, Ali's motion was not subject to the 90-day period prescribed by Rule 59.1, Ala. R. Civ. P., and his motion was not denied by operation of law. On April 26, 2018, the trial court denied Ali's motion to set aside. Ali appealed.

#### Standard of Review

We review de novo a trial court's ruling on a Rule 60(b)(4), Ala. R. Civ. P., motion. See Northbrook Indem. Co. v. Westgate, Ltd., 769 So. 2d 890, 893 (Ala. 2000).

"The standard of review on appeal from the denial of relief under Rule 60(b)(4) is not whether there has been an abuse of discretion. When the grant or denial of relief turns on the validity of

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the judgment, as under Rule 60(b)(4), discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process. Satterfield v. Winston Industries, Inc., 553 So. 2d 61 (Ala. 1989).'

"Insurance Mgmt. & Admin., Inc. v. Palomar Ins. Corp., 590 So. 2d 209, 212 (Ala. 1991)."

Image Auto, Inc. v. Mike Kelley Enters., Inc., 823 So. 2d 655, 657 (Ala. 2001).

#### Analysis

Ali contends that the trial court committed reversible error by denying his motion to set aside the default judgment because, he argues, the trial court lacked personal jurisdiction over him. He contends that he did not receive notice of the amended complaint by publication or otherwise and that the trial court did not obtain personal jurisdiction over him through his participation in the arbitration proceedings.

In its judgment, the trial court concluded that, under the law-of-the-case doctrine, the events occurring in the arbitration proceedings, including the filing of the amended claim and the service of the claim on Ali and Watson, "carried

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forward" in the trial-court proceedings and that, thus, the trial court obtained personal jurisdiction over Ali and Watson when they were served with the amended claim in the arbitration proceedings. Regarding the law-of-the-case doctrine, this Court has stated:

"Generally, the law-of-the-case doctrine provides that when a court decides upon a rule of law, that rule should continue to govern the same issues in subsequent stages in the same case. The purpose of the doctrine is to bring an end to litigation by foreclosing the possibility of repeatedly litigating an issue already decided."

Ex parte Discount Foods, Inc., 789 So. 2d 842, 846 n.4 (Ala. 2001) (citing Murphy v. FDIC, 208 F.3d 959 (11th Cir. 2000), and Blumberg v. Touche Ross & Co., 514 So. 2d 922 (Ala. 1987)). In this case, no judicial determination had been made regarding the propriety of service of process on Ali, and the issue of personal jurisdiction had not been litigated before Ali filed his motion to set aside the default judgment. Thus, the trial court incorrectly applied the law-of-the-case doctrine as a basis for concluding that service of the amended claim in the arbitration proceedings constituted service of process of a complaint in the trial-court proceedings.

Furthermore, the arbitration proceedings were not governed by the Alabama Rules of Civil Procedure, but were

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instead governed by the rules and procedures of the American Arbitration Association. The Alabama Rules of Civil Procedure "govern procedure in the circuit courts" and "effect an integrated procedural system vital to the efficient functioning of the courts." Rule 1, Ala. R. Civ. P. Because the arbitrator is not a trial-court judge, the filing of the amended claim with the arbitrator did not constitute a filing with the trial court. See Rule 5(e), Ala. R. Civ. P. ("The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court ....") Accordingly, the amended claim filed in the arbitration proceedings did not commence a civil action against Ali and Watson in the trial court. See Rule 3, Ala. R. Civ. P. ("A civil action is commenced by filing a complaint with the court."). Similarly, the filing of the amended claim in the arbitration proceedings did not constitute the filing of an amended complaint in the trial court pursuant to Rule 15, Ala. R. Civ. P. In addition, RPM's attorney's agreement to accept service of the amended claim on behalf of Ali and Watson in the arbitration proceedings did not constitute service of process of a complaint in the trial-court case pursuant to Rule 4, Ala. R. Civ. P. In the arbitration proceedings, there

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was no trial-court clerk to issue and sign the summons as required by Rule 4(a) (1) and (2), and there was no record from which proof of service could be confirmed. The filing and service of the amended claim in the arbitration proceedings, therefore, did not constitute perfected service of process of a pleading in the trial-court case. Ali's participation in the arbitration proceedings constituted only an agreement to arbitrate privately Williamson's claims against him, and it did not automatically make Ali a party in the trial-court case that Williamson and commenced against RPM.

After compelling Williamson's claims against RPM to arbitration, the trial court retained jurisdiction over the trial-court case for the purpose of effectuating or reviewing the decision of the arbitrator. See Smallwood v. Holiday Dev., LLC, 38 So. 3d 718, 721 (Ala. 2009) ("The trial court was required by the [Federal Arbitration Act] to give effect to the arbitrator's decision."). See also Lewis v. Oakley, 847 So. 2d 307, 330 (Ala. 2002) ("[I]t is prudent that the trial court retain jurisdiction pending a decision by the [arbitrator] concerning whether it will accept this dispute for arbitration."). See also Rule 71B and Rule 71C, Ala. R. Civ. P. (providing for the procedure for appeal from and

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enforcement of arbitration awards, respectively). The arbitrator here did not render an award but, instead, decided to dismiss the arbitration proceedings on the ground that Ali, Watson, and RPM had failed to engage in the arbitration process. The arbitrator thus concluded that Ali, Watson, and RPM had waived their right to arbitrate, and it remanded the matter to the trial court for further proceedings. See Smallwood, 38 So. 3d at 721 n.1 ("[E]ven though two parties may have contractually agreed to arbitrate any disputes that arise between them, such disputes may nevertheless be resolved in the court system if either party waives its right to compel the other to arbitrate its claims."). "The trial court was required by the [Federal Arbitration Act] to give effect to the arbitrator's decision," and "[t]he proper way for the trial court to give effect to the order of the arbitrator would have been to schedule the 'further proceedings' necessary for [Williamson] to pursue his claims against [RPM]." Smallwood, 38 So. 3d at 721. On remand from arbitration, however, the trial court did not automatically become vested with personal jurisdiction over Ali and Watson by virtue of their voluntary agreement to arbitrate privately

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their dispute with Williamson within the arbitration proceedings that had already commenced between Williamson and RPM. Ali and Watson were not parties to the trial-court case, and, in order for the trial court to obtain jurisdiction over them, they had to be made parties to that case pursuant to the Alabama Rules of Civil Procedure. Nothing prohibited Williamson from requesting the trial court to lift the stay so that he could file an amended complaint adding Ali and Watson as defendants while the arbitration proceedings were pending, and Williamson could have filed an amended complaint adding Ali and Watson as defendants immediately after the arbitrator remanded the matter to the trial court. Williamson also could have filed an independent action against Ali and Watson.

Although Williamson ultimately filed an amended complaint to add Ali and Watson as parties in the trial-court case, it is undisputed that Ali never received service of the amended complaint. This Court has stated:

"The failure to effect proper service under Rule 4, Ala. R. Civ. P., deprives the trial court of personal jurisdiction over the defendant and renders a default judgment void. Cameron v. Tillis, 952 So. 2d 352 (Ala. 2006); Image Auto, Inc. v. Mike Kelley Enters., Inc., [823 So. 2d 655 (Ala. 2001)]. In Bank of America[Corp. v.



Edwards, 881 So. 2d 403 (Ala. 2003)], our supreme court also stated:

""One of the requisites of personal jurisdiction over a defendant is "perfected service of process giving notice to the defendant of the suit being brought." Ex parte Volkswagenwerk Aktiengesellschaft, 443 So. 2d 880, 884 (Ala. 1983). "When the service of process on the defendant is contested as being improper or invalid, the burden of proof is on the plaintiff to prove that service of process was performed correctly and legally." Id. A judgment rendered against a defendant in the absence of personal jurisdiction over that defendant is void. Satterfield v. Winston Industries, Inc., 553 So. 2d 61 (Ala. 1989)."

"881 So. 2d at 405, quoting Horizons 2000, Inc. v. Smith, 620 So. 2d 606, 607 (Ala. 1993)."

"Nichols v. Pate, 992 So. 2d 734, 736 (Ala. Civ. App. 2008)."

Volcano Enters., Inc. v. Rush, 155 So. 3d 213, 217 (Ala. 2014). Williamson made no attempt to serve Ali with the amended complaint by sheriff or other process server or by certified mail before seeking permission from the trial court to serve Ali by publication pursuant to Rule 4.3, Ala. R. Civ. P. In his motion to serve Ali by publication and in the

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affidavit accompanying that motion, Williamson made no meaningful assertion that Ali had avoided service, as is required by Rule 4.3(c). Furthermore, it is apparent from the affidavit itself that Williamson knew of Ali's location, i.e., the federal penitentiary in Atlanta, but Williamson has not provided any proof that attempts were made to serve Ali with process at that location. To the contrary, the motion for service by publication was filed only one minute after Williamson filed the amended complaint, further indicating that there had been no attempt to serve Ali personally with the amended complaint. It follows that the trial court exceeded its discretion in granting Williamson's motion for service by publication. Moreover, we find nothing in the record showing that notice was ever published in a newspaper as is required by Rule 4.3(d). There is no publisher's affidavit averring that the notice was published in a newspaper, and there is no copy of a published notice. Without any proof of service, by publication or by other means of service, we are unable to determine whether Ali received any notice of the trial-court case.

This Court has stated:

"Where it appears on the face of the record that a judgment is void, either from want of jurisdiction of the subject matter or of the defendant, it is the duty of the court, on application by a party having rights and interests immediately involved, to vacate the judgment ... at any time subsequent to its rendition. Sweeney v. Tritzsch, 151 Ala. 242, 44 So. 184 [(1907)]; Griffin v. Proctor, 244 Ala. 537, 14 So. 2d 116 [(1943)] ...."

McDonald v. Lyle, 270 Ala. 715, 718, 121 So. 2d 885, 887 (1960). Williamson did not file an amended complaint with the trial court naming Ali as a defendant until March 28, 2017, and he failed to satisfy his burden of proving that service of process on Ali was effectuated. In fact, the record shows serious shortcomings in the attempts to perfect service of process. Therefore, the trial court never acquired personal jurisdiction over Ali, and its default judgment against him is void.

#### Conclusion

The trial court erred in denying Ali's Rule 60(b)(4) motion to set aside the default judgment against him. That order is reversed, and this case is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Parker, C.J., and Bolin, Wise, and Sellers, JJ., concur.