Rel: October 28, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

1210060

Alicia Cochran

v.

CIS Financial Services, Inc.

Appeal from Marion Circuit Court
(CV-21-900054)

BRYAN, Justice.

Alicia Cochran appeals from an order of the Marion Circuit Court granting a motion for a preliminary injunction filed by Cochran's former employer, CIS Financial Services, Inc. ("CIS"). For the reasons explained

below, this Court lacks jurisdiction over the appeal. Consequently, we dismiss the appeal.

Background

CIS is engaged in the mortgage-origination business and employed Cochran as a branch loan originator. On January 13, 2020, Cochran and a CIS representative signed a "Branch Loan Originator Compensation Agreement" that was drafted by CIS ("the compensation agreement"). "Attachment A" to the compensation agreement contained a provision that stated:

> "Upon execution of this agreement, the [loan originator] agrees to a 12-month non-compete period within a 60-mile radius of the current market at the time of this agreement. Upon any changes or updates to this agreement, the non-compete clause will be revoked and any new terms, if any, will be defined in the new/updated agreement."

Several weeks after Cochran signed the compensation agreement, Cochran also signed a "CIS Non-Compete and Non-Solicitation Agreement" that was also drafted by CIS ("the nonsolicitation agreement"). The nonsolicitation agreement contained the following pertinent provisions:

> "1. Term of Agreement. This Agreement is effective on the Effective Date and shall remain in effect throughout the term

of your employment with [CIS] and for a period of one year thereafter.

"….

"3. Covenant Not to Compete. You agree that at no time during the term of your employment with [CIS] will you engage in any business activity which is competitive with [CIS] nor work for any company which competes with [CIS]. Per agreement employees must notify [CIS] a minimum of 14 days of resignation from [CIS] before signing an agreement with a competing company for employment.

"4. Non-solicitation. During the term of your employment, and for a period of one (1) year immediately thereafter, [y]ou agree not to solicit any employee or independent contractor of [CIS] on behalf of any other business enterprise, nor shall you induce any employee or independent contractor associated with [CIS] to terminate or breach an employment, contractual or other relationship with [CIS].

"….

"6. Soliciting Customers After Termination of Agreement. For a period of one (1) year following the termination of your employment and your relationship with [CIS], [y]ou shall not[,] directly or indirectly, disclose to any person, firm or corporation the names or addresses of any of the customers or clients of [CIS] or any other information pertaining to them. Neither shall you call on, solicit, take away, or attempt to call on, solicit, or take away any customer of [CIS] on whom [y]ou have called or with whom [y]ou became acquainted during the term of your employment, as a direct or indirect result of your employment with [CIS].

"7. Injunctive Relief. You hereby acknowledge (1) that [CIS] will suffer irreparable harm if [y]ou breach your obligations under this [a]greement; and (2) that monetary damages will

> be inadequate to compensate [CIS] for such a breach. Therefore, if [y]ou breach any of such provisions, then [CIS] shall be entitled to injunctive relief, in addition to any other remedies at law or equity, to enforce such provisions."

In June 2021, Cochran's supervisor at CIS, Randy Lowery, left his employment at CIS to accept a position with Movement Mortgage, LLC ("Movement"). Another CIS employee, Geremy Reese, also left CIS to work for Movement. CIS thereafter commenced this action against Lowery and Reese in the circuit court, asserting various counts against them in a verified complaint. Among other things, CIS requested in its complaint injunctive relief against Lowery and Reese. Additionally, CIS filed that same day a motion for a preliminary injunction against Lowery and Reese, pursuant to Rule 65, Ala. R. Civ. P. After receiving evidence, the circuit court entered an order on August 6, 2021, stating, in relevant part, that the parties had agreed that preliminary injunctive relief was appropriate and granting such specified relief.

On August 31, 2021, Cochran resigned her position with CIS. On September 3, 2021, CIS filed an amended complaint in the circuit court, adding as defendants Cochran, Movement, and another former CIS employee, Michael Crowder. The only specific count that CIS asserted against Cochran in the amended complaint was one alleging breach of

contract. Thereafter, CIS filed a motion for a preliminary injunction against Cochran specifically. Cochran filed a brief in opposition to CIS's motion.

The circuit court conducted an evidentiary hearing regarding CIS's motion and, on October 12, 2021, entered a 13-page order granting CIS's motion. In pertinent part, the order stated:

> "It is therefore, ORDERED, ADJUDGED, AND DECREED that:
>
> "A. In keeping with the [c]ompensation [a]greement, … Cochran is preliminarily restrained and enjoined for one year, beginning August 31, 2021, from directly or indirectly through others competing with CIS in the mortgage lending business to include the solicitation of CIS'[s] mortgage loan customers with whom Cochran did business while employed with CIS, within a sixty (60) mile radius of CIS'[s] Muscle Shoals office ….
>
> "B. Separately, in keeping with the [n]on-[s]olicitation [a]greement, … Cochran is preliminarily restrained and enjoined for one year, beginning August 31, 2021, from directly or indirectly through others soliciting or attempting to solicit any CIS employee or customer of CIS on whom Cochran has called on or with whom Cochran became acquainted during the term of her CIS employment.
>
> "No argument or evidence was presented in the hearing regarding the injunction bond amount. … Cochran's brief suggests a dollar figure but there was no breakdown or underlying evidence to support that figure. Due in part to[] the above-referenced payments and consideration [Cochran] is receiving from her current employer for leaving CIS under

> the circumstances presented, CIS is hereby required to post an injunction bond of $50,000."

CIS posted the $50,000 injunction bond required by the circuit court's order. The injunction bond provided, in pertinent part:

> "KNOW ALL MEN BY THESE PRESENTS, That we[, CIS,] as principal(s)[,] and The Ohio Casualty Insurance Company[,] as Surety, are held and firmly bound unto [the circuit-court clerk] in the penal sum of [$50,000], for the payment of which well and truly to be made we and each of us bind ourselves, our heirs, executors and administrators jointly and severally by these presents:
>
> "THE CONDITIONS OF THIS OBLIGATION are that whereas [CIS] has duly applied to this Court for a preliminary restraining order and a temporary writ of injunction against … Cochran[;]
>
> "NOW THEREFORE, the condition of this obligation is such that, if [CIS] shall pay … Cochran … such damages as [s]he sustains by reason of said preliminary restraining order of temporary injunction, if the Court finally decides that [CIS] is not entitled thereto (or to either or any of them, if more than one defendant), this obligation shall be void, otherwise to remain in force and effect."

Cochran appealed to this Court pursuant to Rule 4(a)(1)(A), Ala. R. App. P.

Analysis

On appeal, Cochran challenges the propriety of the circuit court's order granting CIS's motion for a preliminary injunction, arguing that

the respective restraining provisions of the compensation agreement and the nonsolicitation agreement are not enforceable against her. However, CIS has filed a motion to dismiss Cochran's appeal as moot, noting that, by its terms, the preliminary injunction expired after August 31, 2022. CIS also asserts that this case is set for a trial to occur in December 2022. Citing this Court's decision in Rogers v. Burch Corp., 313 So. 3d 555 (Ala. 2020), CIS argues that this appeal no longer presents a justiciable controversy and that this Court, therefore, lacks jurisdiction over the appeal. Consequently, CIS argues, this appeal should be dismissed.

The facts of Rogers were similar to the facts presented in this case. In Rogers, the trial court entered an order preliminarily enjoining Joshua Rogers from soliciting any employees or clients of his former employer, Burch Corporation ("Burch"), based on the terms of Rogers's employment agreement with Burch. Rogers appealed.

On June 19, 2020, this Court issued our opinion in Rogers, reasoning as follows:

> "At the outset, we must determine whether Rogers's appeal from the preliminary injunction is moot based on the terms of the employment agreement. A moot case lacks justiciability. Underwood v. Alabama State Bd. of Educ., 39 So. 3d 120 (Ala. 2009). 'This Court must sua sponte recognize and address the lack of subject-matter jurisdiction owing to

the lack of justiciability.' Surles v. City of Ashville, 68 So. 3d 89, 92 (Ala. 2011).

> "'Events occurring subsequent to the entry or denial of an injunction in the trial court may properly be considered by this Court to determine whether a cause, justiciable at the time the injunction order is entered, has been rendered moot on appeal. "[I]t is the duty of an appellate court to consider lack of subject matter jurisdiction ...." Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983). "[J]usticiability is jurisdictional." Ex parte State ex rel. James, 711 So. 2d 952, 960 n.2 (Ala. 1998). A justiciable controversy is one that "is definite and concrete, touching the legal relations of the parties in adverse legal interest, and it must be a real and substantial controversy admitting of specific relief through a decree." Copeland v. Jefferson Cnty., 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969). A case lacking ripeness has yet to come into existence; a moot case has died. Between the two lies the realm of justiciability. See 13B Charles Alan Wright et al., Federal Practice and Procedure § 3533 (3d ed. 2008)("It is not enough that the initial requirements of standing and ripeness have been satisfied; the suit must remain alive throughout the course of litigation, to the moment of final appellate disposition.").'

"South Alabama Gas Dist. v. Knight, 138 So. 3d 971, 975-76 (Ala. 2013)(footnotes omitted).

"In this case, the trial court entered a preliminary injunction based on the parties' employment agreement.

> "'The primary purpose of injunctive relief ... is to prevent future injury. See Williams v. Wert, 259 Ala. 557, 559, 67 So. 2d 830, 831 (1953)("The court

> cannot enjoin an act which has occurred."); 43A C.J.S. Injunctions 17 (2014)("Equity will not usually issue an injunction when the act complained of has been committed and the injury has already occurred.").'

"Irwin v. Jefferson Cty. Pers. Bd., 263 So. 3d 698, 704 (Ala. 2018).

> "Rogers notified Burch on November 21, 2017, that his last day of employment with Burch would be December 5, 2017. His employment agreement with Burch provided that he could not solicit Burch's employees or customers for two years from the date his employment ended, which would have been, at the latest, December 6, 2019. On October 17, 2019, the trial court entered a preliminary injunction prohibiting Rogers from soliciting Burch's employees or customers. Rogers filed his notice of appeal on October 30, 2019. The two-year period set out in the employment agreement has now expired. Therefore, the issue whether the trial court exceeded its discretion in prohibiting Rogers from soliciting Burch's employees or customers from the date the order was entered on October 17, 2019, until the two-year period established by the employment agreement expired at the latest on December 6, 2019, is now moot. That is, there is nothing justiciable concerning the preliminary injunction because the nonsolicitation clause in the employment agreement expired, at the latest, on December 6, 2019. Accordingly, '[a] decision by us in this case would accomplish nothing'; therefore, we conclude that the case before us is moot and that the appeal is due to be dismissed. Eagerton v. Corwin, 359 So. 2d 767, 769 (Ala. 1977)."

313 So. 3d at 560-61 (footnote omitted).

The Court's mootness conclusion in Rogers was based on only the terms of the period of restraint set out in the employment agreement at

issue in that case. The pertinent provisions of the circuit court's order in this case explicitly state that "Cochran is preliminarily restrained and enjoined for one year, beginning August 31, 2021" (emphasis added), which period of restraint and date, respectively, correspond with the circuit court's interpretation of the terms of the agreements at issue in this case and the date on which Cochran left her employment with CIS. Consequently, it is clear that, by its own terms, the preliminary injunction expired after August 31, 2022. Under the reasoning of Rogers, it appears that Cochran's appeal is now moot.

Cochran disagrees. She notes that the circuit court's order granting CIS's motion for a preliminary injunction required CIS to post an injunction bond. She argues that the issue of CIS's potential liability on the injunction bond prevents this appeal from being moot. Although the former employer in Rogers was also required to post an injunction bond as a condition of the preliminary injunction at issue in that case, the Rogers Court did not address the bond in its mootness analysis. In support of her argument, Cochran cites this Court's decision in International Molders & Allied Workers Union, AFL-CIO-CLC v.

Aliceville Veneers Division, Buchanan Lumber Birmingham, 348 So. 2d 1385 (Ala. 1977).

In International Molders, the trial court entered a preliminary injunction concerning certain activities pertaining to a strike being conducted by an employees' union. On appeal from the order imposing the preliminary injunction, this Court stated the following in its August 26, 1977, opinion:

> "We note from the record that the strike itself ended, and all picketing ceased, on February 13, 1977. By virtue of these facts the [company] has moved this Court to dismiss this appeal and dissolve the injunction on the ground of mootness. The [company]'s motion must be overruled, however. Since we have found that the issuance of the injunction was inappropriate, there remains the question of the [company]'s liability to the [union] on [the company]'s bond for costs, damages and reasonable attorneys fees."

International Molders, 348 So. 2d at 1389.

CIS asserts that International Molders appears to be distinguishable from the present case because, CIS contends, no further litigation was contemplated in the trial court in International Molders. In other words, CIS appears to read the procedural history set out in International Molders as indicating that the preliminary-injunction hearing in that case was consolidated with a trial of the action on the

merits, see Rule 65(a)(2), Ala. R. Civ. P., effectively resulting in the entry of a final judgment in favor of the company, which was then reviewed by this Court on appeal. Thus, according to CIS's reading of the case, the union would have been deprived of an opportunity to seek an award of damages based on the company's potential liability under the injunction bond if this Court had not issued a decision in that appeal addressing the propriety of the preliminary injunction.

Our reading of International Molders does not indicate that a final judgment had been entered in that case. This Court's opinion stated that, in addition to preliminary injunctive relief, the company had requested an award of damages for the union's strike activities, which request does not appear to have been resolved by the trial court's order that this Court reviewed on appeal. Moreover, this Court considered and reversed only the trial court's order granting the preliminary injunction and remanded the cause for further proceedings consistent with this Court's opinion. Thus, it does not appear that International Molders is distinguishable from this case on the factual and procedural grounds suggested by CIS. Moreover, we note that our research indicates that this Court's decision in International Molders is consistent with an older decision of this Court

that the parties do not address but cannot be ignored: Postal Telegraph-Cable Co. v. City of Montgomery, 193 Ala. 234, 236, 69 So. 428, 429 (1915).

In Postal Telegraph-Cable Co., the City of Montgomery ("the City") obtained a "temporary" injunction in the trial court restraining a telegraph company, Postal Telegraph-Cable Company ("Postal"), from maintaining and operating a telegraph office in Montgomery because Postal had not obtained a license to conduct such business activities. 193 Ala. at 237, 69 So. at 429. The injunction was "effective only during the year 1914." Id. As a condition of the injunction, the City posted a $500 bond. Postal appealed from the order granting the injunction.

The City moved to dismiss Postal's appeal, arguing that the appeal was moot when submitted for this Court's consideration sometime in 1915. In its June 17, 1915, opinion, the Court reasoned as follows:

> "We are unable to agree that this appeal does not affect existing rights, and that the question involved is only one of costs.
>
> "… The [City] sought and obtained an injunction against [Postal]'s transacting intrastate business in the city of Montgomery, and the writ issued prohibited the transaction of any such business from December 12, 1914, to January 1, 1915. As a condition precedent to the issuance of the writ the court below required the [City] to enter into bond payable to

[Postal] as required by law, and which condition reads as follows: 'Now, if the [City] and its sureties, or either of them, shall pay or cause to be paid all damages and costs which any person may sustain by the suing out of said temporary injunction or restraining order, if the same is dissolved, then this obligation to be void; otherwise, to remain in full force and effect.'

"The right of the [C]ity to thus prevent [Postal] from engaging in intrastate business for this period of time is clearly a question which [Postal] had a right to have determined by the court of last resort. The injunction bond was required for its protection against damages which it might sustain by the suing out of the temporary writ of injunction, should same be dissolved. The condition of liability upon the bond is the dissolution of the injunction. A dismissal of this appeal would result in leaving the question of whether or not the issuance of the injunction was wrongful, and the consequent question as to whether or not the injunction should be dissolved, undetermined, and therefore leave without adjudication the question touching the very condition of the bond, and, of consequence, that of liability thereon. To hold that merely because the year 1914 had passed before this cause was submitted would deprive [Postal] of the right to have adjudicated to its final conclusion the right of the [C]ity to close its place of business for intrastate business [and] would, in effect, … close the door of the court to [Postal] to have determined the question as to the liability of the [C]ity upon the said injunction bond. This latter is clearly an existing right, which [Postal] is entitled to have adjudicated in the courts of last resort.

"….

"We are of the opinion that this record does not present what is called a moot case, but that in fact existing rights of the parties are involved which it is the duty of this court to

> determine. The motion to dismiss the appeal will therefore be denied."

Postal Telegraph-Cable Co., 193 Ala. at 237-40, 69 So. at 430 (emphasis added).

As noted above, the parties have not addressed Postal Telegraph-Cable Co. However, CIS argues that, if the pertinent reasoning from International Molders cannot be meaningfully distinguished from the present case, it should be overruled, especially in light of certain pertinent federal precedent. For the reasons explained below, we agree that the relevant part of International Molders should be overruled. Moreover, although the parties have not addressed Postal Telegraph-Cable Co., we conclude that the analysis from Postal Telegraph-Cable Co. quoted above cannot be reconciled with our decision to overrule the relevant part of International Molders. Therefore, we conclude that the relevant part of Postal Telegraph-Cable Co. should be overruled as well. Contrary to the premises animating the pertinent reasoning from International Molders and Postal Telegraph-Cable Co., under this Court's current precedent an appeal from an order granting a preliminary injunction is not the only opportunity for the enjoined party to seek an award of damages for an allegedly wrongful injunction.

CIS notes that, only a few years after this Court's decision in International Molders, the United States Supreme Court, in another case involving an appeal from an order imposing a preliminary injunction, reached the opposite conclusion than this Court had in International Molders regarding the issue of mootness. In University of Texas v. Camenisch, 451 U.S. 390 (1981), a federal district court imposed a preliminary injunction requiring the University of Texas to pay for a sign-language interpreter for a deaf student. As a condition of the preliminary injunction, the district court required the student to "'post a security bond in the amount of $3,000.00 pending the outcome of this litigation pursuant to Rule 65(c), [Fed.] R. [Civ.] P.'" Camenisch, 451 U.S. at 392 (emphasis omitted).

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the district court's order granting the preliminary injunction. By the time the Fifth Circuit Court of Appeals issued its decision, however, the university had complied with the injunction and had paid for the student's interpreter, and the student had already graduated. The Fifth Circuit Court of Appeals determined that the case was not moot because a justiciable controversy remained concerning who had the

responsibility to pay for the interpreter. The United States Supreme Court granted certiorari review, and the student raised the issue of mootness before the Court.

The Camenisch Court reasoned as follows:

> "The Court of Appeals correctly held that the case as a whole is not moot, since, as that court noted, it remains to be decided who should ultimately bear the cost of the interpreter. However, the issue before the Court of Appeals was not who should pay for the interpreter, but rather whether the District Court had abused its discretion in issuing a preliminary injunction requiring the University to pay for him."

451 U.S. at 393. The Court continued:

> "In short, where a federal district court has granted a preliminary injunction, the parties generally will have had the benefit neither of a full opportunity to present their cases nor of a final judicial decision based on the actual merits of the controversy. Thus when the injunctive aspects of a case become moot on appeal of a preliminary injunction, any issue preserved by an injunction bond can generally not be resolved on appeal, but must be resolved in a trial on the merits. Where, by contrast, a federal district court has granted a permanent injunction, the parties will already have had their trial on the merits, and, even if the case would otherwise be moot, a determination can be had on appeal of the correctness of the trial court's decision on the merits, since the case has been saved from mootness by the injunction bond."

451 U.S. at 396 (emphasis added). After considering relevant precedents, the Court concluded:

> "In sum, the question whether a preliminary injunction should have been issued here is moot, because the terms of the injunction, as modified by the Court of Appeals, have been fully and irrevocably carried out. The question whether the University must pay for the interpreter remains for trial on the merits. Until such a trial has taken place, it would be inappropriate for this Court to intimate any view on the merits of the lawsuit."

451 U.S. at 398.

Before this Court, CIS cites several decisions from various United States Courts of Appeals that it contends have applied the foregoing principle from Camenisch. However, one very recent case in particular is most factually similar to the case presently before this Court. In Vital Pharmaceuticals, Inc. v. Alfieri, 23 F.4th 1282, 1285 (11th Cir. 2022), the United States Court of Appeals for the Eleventh Circuit considered an appeal and a cross-appeal involving "the partial grant and partial denial of a motion for a preliminary injunction to enforce several restrictive covenants against the former employees of a producer of energy drinks."

The Alfieri court reasoned as follows:

> "We turn first, as we must, to our own jurisdiction. See Peppers v. Cobb Cnty., 835 F.3d 1289, 1296 (11th Cir. 2016)('[W]e are obliged first to consider our power to entertain the claim.'). The constitutional command that the federal judiciary hear only 'Cases' and 'Controversies,' see U.S. CONST. art. III, § 2, applies with as much force to courts of appeals as it does district courts, see [United States v.]

Amodeo, 916 F.3d [967,] 971 [(11th Cir. 2019)]. And because a case or controversy 'must exist throughout all stages of litigation,' id. (internal quotation marks omitted), we must ensure -- up until the moment our mandate issues -- that intervening events have not mooted the appeal by preventing us from 'grant[ing] any effectual relief whatever in favor of the appellant,' United States v. Sec'y, Fla. Dep't of Corr., 778 F.3d 1223, 1228 (11th Cir. 2015)(internal quotation marks omitted); see also Brooks v. Ga. State Bd. of Elections, 59 F.3d 1114, 1119 (11th Cir. 1995)('An appellate court simply does not have jurisdiction under Article III to decide questions which have become moot by reason of intervening events.' (internal quotation marks omitted)); Key Enters. of Del., Inc. v. Venice Hosp., 9 F.3d 893, 899 (11th Cir. 1993)(en banc)(dismissing an appeal '[b]ecause the case became moot after the panel published its decision but before the mandate issued').

"'One such intervening event is the expiration of a preliminary injunction that is being challenged in an interlocutory appeal.' Sec'y, Fla. Dep't of Corr., 778 F.3d at 1228-29. 'If the preliminary injunction has expired, it no longer has legal effect on the parties, and a decision by this court affirming or vacating the defunct injunction cannot affect the rights of the litigants.' Id. at 1229 (alteration adopted)(internal quotation marks omitted). Similarly, we have 'consistently held that the appeal of a preliminary injunction is moot where the effective time period of the injunction has passed.' Brooks, 59 F.3d at 1119. And an appeal from the denial of a preliminary injunction is moot if 'the end-date of the requested injunction,' id., has come and gone before the court of appeals issues its mandate.

"[One former employee]'s appeal is moot to the extent it challenges the portions of the preliminary injunction prohibiting her from working for [her former employer]'s competitors or soliciting [the former employer]'s employees. The twelve-month prohibition against working for

> competitors began on October 16, 2020, when [the former employer] posted bond, and ended a year later. And the prohibition against soliciting [the former employer]'s employees also expired October 16, 2021, a year after '[the former employee and her subsequent employer] c[a]me into compliance with the ... agreement' through [the subsequent employer]'s termination of [the former employee].
>
> "[The former employee]'s efforts to save those portions of her appeal from mootness are unavailing. She argues that '[t]he injunction bond undercuts the notion that' those portions of the appeal are moot. But 'any issue preserved by [that] bond ... must be resolved in a trial on the merits,' not 'on appeal of [the] preliminary injunction.' Univ. of Tex. v. Camenisch, 451 U.S. 390, 396, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981)."

23 F.4th at 1288-89.

We find the reasoning set out in the quoted portions of Camenisch and Alfieri persuasive as it relates to this Court's jurisdiction over this appeal. Although the Alfieri court noted that a federal justiciability analysis is grounded in the case-or-controversy requirement of Art. III, § 2, of the United States Constitution -- which this Court has noted has no direct analog in the Alabama Constitution of 1901 -- this Court has previously looked to federal decisions when considering the concepts of justiciability and mootness and how those concepts impact the jurisdiction of Alabama courts to decide cases. See Pharmacia Corp v. Suggs, 932 So. 2d 95, 97-98 (Ala. 2005). Notably, the pertinent analyses

of Camenisch and Alfieri referenced the fact that, under federal law, when the party obtaining a preliminary injunction posts an injunction bond as a condition on the imposition of the preliminary injunction, the issues preserved by the injunction bond can be resolved in a subsequent trial on the merits of the parties' claims.

Clearly, CIS's breach-of-contract claim against Cochran remains pending in the circuit court and has not become moot. As noted above, CIS has asserted in its motion to dismiss this appeal that a trial is scheduled for December 2022. Therefore, the merits of CIS's breach-of-contract claim have not yet been litigated in the circuit court and, consequently, are not properly before this Court in this appeal.

Similarly, we note that the issue of CIS's liability on the injunction bond has not yet been litigated in the circuit court and is, therefore, likewise not properly before us in this appeal. Echoing the considerations referenced by this Court in the relevant portions of International Molders and Postal Telegraph-Cable Co., quoted above, Cochran argues that "CIS should not be allowed to escape review of the order it obtained and deprive Cochran of her right, in the event the trial court is reversed, to recover damages she has suffered as a result of being enjoined for the last

year." Cochran's response to CIS's motion to dismiss at 6. As explained below, however, this Court's dismissal of this appeal does not deprive Cochran of her right to seek an award of damages for the allegedly wrongful preliminary injunction.

The requirement that a party seeking a preliminary injunction in an Alabama court post security for the injunction is set forth in Rule 65, Ala. R. Civ. P. Specifically, Rule 65(c) provides:

> "(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and reasonable attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained; provided, however, no such security shall be required of the State of Alabama or of an officer or agency thereof, and provided further, in the discretion of the court, no such security may be required in domestic relations cases.
>
> "The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule."

Rule 65.1, Ala. R. Civ. P., provides:

> "Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of

> an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known."

(Emphasis added.)

In Ex parte Waterjet Systems, Inc., 758 So. 2d 505, 511 (Ala. 1999), this Court "develop[ed] standards for the recovery of damages on" an injunction bond. The Court stated:

> "A party that is wrongfully enjoined or restrained has 'a cause of action for recovery under the surety bonds posted in accordance with Rule 65(c).' Talladega Little League, Inc. v. Anderson, 577 So. 2d 1293, 1296 (Ala. 1991). A wrongfully enjoined or restrained party may also use Rule 65.1, which provides a motion procedure for enforcement of the liability of the surety. 'In order for a party to be liable on the bond posted pursuant to Rule 65(c), the [trial] court must find that the party [enjoined] had been "wrongfully" enjoined.' Marshall Durbin & Co. v. Jasper Utilities Bd., 437 So. 2d 1014, 1027 (Ala. 1983). On appeal, a trial court's award of 'costs, damages, and ... attorney fees' pursuant to a security bond will not be disturbed absent an abuse of discretion. Id. at 1027."

Ex parte Waterjet Sys., 758 So. 2d at 510. The Court articulated the following pertinent standards:

> "The right to recover on a bond posted as a condition to obtaining an injunction arises once the party establishes that he or she was wrongfully enjoined …. The only questions a trial court must answer are (1) whether the party was wrongfully enjoined or restrained and (2) what, if any, damages the party is entitled to recover. Furthermore, a trial

> court cannot, on its own motion, discharge the principal and the surety on the interlocutory-injunction bond. … [T]he trial court must give the enjoined or restrained party the opportunity to proceed against the injunction bond, to prove that he or she was wrongfully enjoined or restrained, and 'to prove their damages, if any, by the imposition of the injunction.' [Churchill v. Board of Trs. of the Univ. of Alabama in Birmingham], 409 So. 2d [1382,] 1391 [(Ala. 1982)(Torbert, C.J., dissenting)].
>
> "Of course, we do not require that a plaintiff sit by and wait for the defendant to request damages under the injunction bond. The plaintiff can force the issue by requesting the court to discharge the principal and the surety on the injunction bond. This procedure allows the defendant to decide whether to attempt to recover damages on the injunction bond and gives the plaintiff a procedure to avoid endless concern about whether it will be held liable on the injunction bond."

Ex parte Waterjet Sys., 758 So. 2d at 512-13.

As noted above, in this appeal, Cochran argues that the circuit court erred by granting CIS's motion for a preliminary injunction because, she says, the pertinent provisions of the compensation agreement and the nonsolicitation agreement are not enforceable against her. The issue whether Cochran should be enjoined from engaging in the conduct described in the pertinent provisions of those agreements until August 31, 2022, is moot; that date has already passed, and this Court is consequently powerless to grant Cochran relief from that injunction. In

other words, that issue is not justiciable, and this Court cannot exercise jurisdiction over this appeal for the purpose of deciding that question.

Whether Cochran should have been enjoined from engaging in such conduct until August 31, 2022, and whether she suffered damages as a result of the injunction are not moot issues. See Ex parte Waterjet Sys., 758 So. 2d at 512 ("[A] party is wrongfully enjoined 'when it turns out the party enjoined had the right all along to do what it was enjoined from doing.'" (quoting Nintendo of America, Inc. v. Lewis Galoob Toys, Inc., 16 F.3d 1032, 1036 (9th Cir. 1994))). However, those are also issues that have not yet been addressed by the circuit court. Pursuant to the procedure set out by this Court in Ex parte Waterjet Systems, those issues should be presented to and decided by the circuit court in the first instance, if Cochran so desires.[1] Until the circuit court has first

[1]Notably, in Ex parte Waterjet Systems, the underlying action had been litigated to a final judgment, and this Court granted a petition for the writ of certiorari to review a decision of the Court of Civil Appeals. In that case, the trial court had awarded the enjoined party attorney fees and expenses. After setting out the standards discussed above, this Court reasoned that it was unable to determine from the record "whether [the enjoined party had] produced evidence indicating that he was wrongfully enjoined, that is, that he, as the enjoined party, at all times had the right to do the enjoined acts and that he suffered damage as the actual, natural, and proximate result of the injunction." Ex parte Waterjet Sys., 758 So. 2d at 513 (emphasis added). This Court

adjudicated those issues, "it would be inappropriate for this Court to intimate any view on the merits of the lawsuit" solely for the purpose of determining liability on the injunction bond. See Camenisch, 451 U.S. at 398.[2]

As CIS notes, this Court's recent decision in Rogers appears to implicitly recognize the Ex parte Waterjet Systems procedure. We agree,

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"remand[ed] th[e] case for the Court of Civil Appeals to direct the trial court to hold a hearing on this issue." Ex parte Waterjet Sys., 758 So. 2d at 513. The deficiencies in the record that prevented this Court from deciding the question of liability on the injunction bond at issue in Ex parte Waterjet Systems further demonstrate why such questions should first be litigated in, and adjudicated by, the trial court before review by an appellate court.

[2]We also note that, since Ex parte Waterjet Systems was decided, this Court has reaffirmed an enjoined party's right to seek an award of damages for a wrongfully issued injunction after the merits of the underlying action have been resolved. See Sycamore Mgmt. Grp., Inc. v. Coosa Cable Co., 81 So. 3d 1224, 1235 (Ala. 2011)("[W]e conclude that, when a party provides the security bond required by Rule 65(c) upon the entry of a preliminary injunction and that injunction is determined to be wrongful, the party wrongfully enjoined is entitled to seek an award of damages caused by the wrongful injunction up to the amount of the bond for the period the bond was in force. We further conclude that such a damages award is not barred by the failure of the party enjoined to specifically appeal the discharge of the security bond and that a security bond that has been discharged upon the entry of a permanent injunction is reinstated if that permanent injunction is later determined to have been wrongful.").

and what was implicit in Rogers we state explicitly in this case: The issue of a movant's potential liability on an injunction bond posted by the movant as security for a preliminary injunction does not, in and of itself, invest this Court with jurisdiction over an appeal by the enjoined party from an order granting the preliminary injunction when the preliminary injunction has expired by its own terms and has otherwise become moot. Under the procedure set out in Ex parte Waterjet Systems, the issue of the movant's potential liability under an injunction bond for an allegedly wrongfully granted preliminary injunction should be litigated in, and first decided by, the trial court. To the extent that the pertinent reasoning from this Court's decisions in International Molders and Postal Telegraph-Cable Co. conflicts with our holding in this regard, those parts of those decisions are hereby overruled.

Conclusion

The preliminary injunction challenged in Cochran's appeal has expired by its own terms. Consequently, this Court lacks the power to grant Cochran relief from the preliminary injunction; therefore, this appeal is no longer justiciable and has become moot. The appeal is due to be dismissed.

APPEAL DISMISSED.

Parker, C.J., and Bolin, Shaw, Wise, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.