Rel: July 8, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210058

Ex parte Mobile County Board of Equalization

PETITION FOR WRIT OF MANDAMUS

(In re: Atwood Drilling, Inc.

v.

Mobile County Board of Equalization)

(Mobile Circuit Court: CV-20-902105)

STEWART, Justice.

The Mobile County Board of Equalization ("the Board") petitions this Court for a writ of mandamus directing the Mobile Circuit Court ("the trial court") to dismiss, for lack of subject-matter jurisdiction, an appeal filed by Atwood Drilling, Inc. ("Atwood"), challenging the Board's final assessment of ad valorem property taxes. For the reasons expressed below, we grant the petition and issue the writ.

Facts and Procedural History

This case concerns a dispute between Atwood and the Board as to the assessed value of personal property owned by Atwood ("the property"). On October 1, 2020, the Board issued a final assessment appraising the fair-market value of the property at $66,286,325 for ad valorem tax purposes. On October 16, 2020, Atwood timely filed a notice of appeal to the trial court, challenging the assessment as too high pursuant to §§ 40-3-24 and -25, Ala. Code 1975.

On January 19, 2021, the Board moved to dismiss Atwood's appeal, alleging (1) that taxes on the property had become delinquent because

they had not been paid by January 1, 2021, and (2) that, by failing to pay the disputed amount before January 1, 2021, Atwood had not satisfied a jurisdictional requirement in § 40-3-25 -- specifically, the requirement that, when appealing a tax assessment, a taxpayer who has not executed a supersedeas bond must pay the assessed taxes before they become delinquent. In support of the motion to dismiss, the Board attached a receipt from the office of the Mobile County Revenue Commissioner ("the Commissioner") indicating that Atwood had not paid the assessed taxes as of January 19, 2021.[1]

Atwood filed a response to the Board's motion to dismiss conceding that "it [did] not appear that the payment [had] been delivered [to the Commissioner] yet." Nevertheless, Atwood alleged that it had, in fact, sent the Commissioner via certified mail on December 10, 2020, a check

[1]The attachment of the exhibit in support of the Board's motion to dismiss did not operate to convert the motion to dismiss to a summary-judgment motion. See Committee Comments on 1973 Adoption of Rule 12, Ala. R. Civ. P. ("Affidavits, depositions, answers to interrogatories and similar evidentiary matter may be presented on a motion under Rule 12. Such matter is freely considered on a motion attacking jurisdiction."); see also Ex parte Burnell, 90 So. 3d 708, 709 n.1 (Ala. 2012).

in the amount of $642,977.11 as payment of the assessed taxes and suggested that delivery had likely been delayed because of service disruptions related to the COVID-19 pandemic. Atwood submitted the affidavit of Cynthia L. Messina, a tax manager employed by Valaris PLC ("Valaris"), Atwood's then-parent company, in support of its response. Messina testified (1) that Valaris had mailed payment for the taxes due on the property, along with a letter, to the Commissioner on December 10, 2020, (2) that both the letter and the payment had been mailed via certified mail, (3) that the mailing had not been returned to Valaris, and (4) that the United States Postal Service ("the USPS") had not informed Valaris that the mailing had been delivered to the wrong address or would not be delivered.

Messina's affidavit included two attached exhibits: a copy of the letter allegedly mailed to the Commissioner and a document purporting to be a copy of the certified-mail receipt. Atwood did not attach a copy of the alleged payment check. The copy of the certified-mail receipt was

addressed to the Commissioner[2] and bore both a tracking number[3] and a postmark from the Rich Hill Post Office in Houston, Texas, dated December 10, 2020. The certified-mail receipt also featured five services under the category of "Extra Services & Fees," and neither "Return Receipt (hardcopy)" nor "Return Receipt (electronic)" was marked as a selected service.

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[2]The "City, State, ZIP" entry at the bottom of the certified-mail receipt, although legible, appears to show signs of erasure and overwriting.

[3]The certified-mail receipt lists the tracking number of the mailing. Neither the Board nor Atwood has indicated that it has, based on the tracking number, sought information from the USPS regarding the delivery status of the letter and the payment allegedly mailed to the Commissioner. We note, however, that, based on the publicly available information accessible on the USPS's Web site, the status of the mailing is described by the USPS as "Delivered, Individual Picked Up at [a] Postal Facility" in Baton Rouge, Louisiana, on December 16, 2020. If true, this information would suggest that the mailing was not addressed or delivered to the Commissioner and would call into question the veracity of the affidavit and exhibits submitted to the trial court by Atwood. See note 2, supra. Nevertheless, because the tracking information is not contained in the materials before us, we do not consider it in addressing the merits of the petition, and we leave for the trial court and the parties the determination as to whether this issue requires further attention.

In its response to the Board's motion to dismiss, Atwood argued that, pursuant to § 40-1-45, Ala. Code 1975, payment sent via certified mail relates back to the postmark date. Atwood, therefore, urged the trial court to find the motion to dismiss premature -- contending that, although it did "not appear that the payment ... [had] been delivered yet," the payment allegedly mailed on December 10, 2020, would be considered timely upon delivery pursuant to § 40-1-45.

In reply, the Board argued that the "mailbox rule" in § 40-1-45 does not extend to undelivered tax payments. Specifically, the Board noted that § 40-1-45(d)(2) expressly provides that "[t]his section shall not apply with respect to ... [c]urrency or other medium of payment unless actually received and accounted for," and cited Ex parte Kennemer, 280 So. 3d 367, 372 (Ala. 2018) (Sellers, J., concurring specially), in support of that proposition.

At some point following the Board's filing of the motion to dismiss, Atwood paid the tax bill, including penalties and interest, with a second check. After holding several hearings on the matter, the trial court,

without stating the findings on which its decision was based, entered an order denying the Board's motion to dismiss on September 10, 2021.

On September 24, 2021, the Board filed the present petition, alleging that, because Atwood had failed to perfect the appeal by either paying the assessed taxes before January 1, 2021, or by executing a supersedeas bond at the time it filed the notice of appeal, the trial court lacks subject-matter jurisdiction over Atwood's appeal.

Standard of Review

A trial court's denial of a motion to dismiss for failure to comply with the requirements of § 40-3-25 presents a question of subject-matter jurisdiction. See Ex parte Shelby Cnty. Bd. of Equalization, 159 So. 3d 1, 2 (Ala. 2014); Lumpkin v. State, 171 So. 3d 599, 601 (Ala. 2014) ("[A]ll the requirement[s] of § 40-3-25 had to be timely met in order to properly invoke the trial court's jurisdiction.").

"The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus." Ex parte Liberty Nat'l Life Ins. Co., 888 So. 2d 478, 480 (Ala. 2003). A writ of mandamus is an extraordinary

remedy available only when the petitioner can demonstrate: "'(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'" Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)).

Discussion

At issue in this case is whether Atwood failed to meet the statutory requirements in § 40-3-25 for perfecting an appeal from a final assessment of the Board. The dispositive question presented is whether Atwood's allegation that payment was sent to the Commissioner via certified mail on December 10, 2020, and the evidentiary materials presented in support of that allegation, entitled Atwood to the presumptions of delivery and payment on the postmark date pursuant to § 40-1-45.

"The right of appeal in tax proceedings is a right conferred by statute and must be exercised in the mode and within the time prescribed

by the statute." Denson v. First Nat'l Bank of Birmingham, 276 Ala. 146, 148, 159 So. 2d 849, 850 (1964); see also Coughlin v. State, 455 So. 2d 17, 18 (Ala. Civ. App. 1983), aff'd, 455 So. 2d 18 (Ala. 1984) ("The rule is that the right to appeal in a tax proceeding is a right conferred by statute and must be exercised in the manner and within the time required by the statute.").

Here, Atwood was required to timely satisfy the requirements of § 40-3-25 to perfect its appeal from the Board's final assessment. Section 40-3-25 provides, in pertinent part:

> "When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same becomes delinquent; and, upon failure to do so, the court upon motion ex mero motu must dismiss the appeal, unless at the time of taking the appeal the taxpayer has executed a supersedeas bond with sufficient sureties to be approved by the clerk of the circuit court in double the amount of taxes, payable to the State of Alabama, conditioned to pay all taxes, interest, and costs due the state, county, or any agency or subdivision thereof."

(Emphasis added.) Thus, § 40-3-25 clearly prescribes that, to perfect the appeal and vest jurisdiction in the trial court, a taxpayer must either execute a supersedeas bond at the time of taking the appeal or pay the

assessed taxes before they become delinquent. That Atwood never executed a supersedeas bond is undisputed; in controversy, instead, is whether Atwood paid the "taxes due ... before the same bec[ame] delinquent," § 40-3-25, and, if not, whether the trial court must dismiss the appeal for lack of subject-matter jurisdiction.

"The burden of establishing the existence of subject-matter jurisdiction falls on the party invoking that jurisdiction." Crutcher v. Williams, 12 So. 3d 631, 635 (Ala. 2008). Once a defendant has moved to dismiss a case for lack of subject-matter jurisdiction, the plaintiff is then required to establish the "'"factual predicates of jurisdiction by a preponderance of the evidence."'" Ex parte Safeway Ins. Co. of Alabama, Inc., 990 So. 2d 344, 349 (Ala. 2008) (citations omitted).[4]

Here, the Board filed a motion to dismiss Atwood's appeal pursuant to Rule 12(b)(1), Ala. R. Civ. P., and submitted in support of that motion

[4]When a defendant seeks from this Court a writ of mandamus directing a trial court to dismiss an action for lack of subject-matter jurisdiction, the defendant establishes a clear legal right to dismissal if the plaintiff has failed to prove subject-matter jurisdiction below. Ex parte Safeway, 990 So. 2d at 352.

documentation indicating that the Commissioner had not received payment of the assessed taxes as of January 19, 2021. As noted, § 40-3-25 requires a taxpayer who has not executed a supersedeas bond to pay the assessed taxes before they become delinquent in order to perfect an appeal and invoke a trial court's jurisdiction. Pursuant to § 40-11-4(b), Ala. Code 1975, taxes become delinquent if not paid before January 1. Section 40-1-5(b), Ala. Code 1975, moreover, provides that "no payment shall be considered made until the money is actually received by the state." (Emphasis added.) Thus, the Board challenged the trial court's jurisdiction by presenting evidence indicating that the Commissioner had not received payment of the assessed taxes before January 1, 2021, and contending that Atwood had therefore failed to satisfy the statutory requirements in § 40-3-25 for perfecting an appeal because no payment had been made as of January 19, 2021.

In seeking to establish the existence of subject-matter jurisdiction, Atwood submitted an affidavit from Messina and a copy of a certified-mail receipt, purporting to indicate that the amount due had been sent

to the Commissioner via certified mail before the assessed taxes became delinquent. That evidence, Atwood alleges, raises the possibility that there will be a timely delivery and payment because, according to Atwood, § 40-1-45 provides that "[p]ayments of property taxes relate back to the date of mailing if they are received" and "[t]he statute supplies no deadline by which such payment must be received to relate back." Atwood's answer at 4-5. In other words, Atwood asserts, because delivery of the payment remains a possibility, it is possible that the payment may be deemed timely received pursuant to § 40-1-45. As discussed below, however, the flaws in Atwood's argument are (1) that the alleged initial payment has not, to date, been delivered to the Board and (2) that the presumption of delivery arises only when the mailer alleges, and presents sufficient evidence to demonstrate, that payment was mailed pursuant to the specific means set forth in § 40-1-45(c) and the regulations promulgated thereunder. See Shoals Mill Dev., Ltd. v. Shelby Cnty. Bd. of Equalization, 238 So. 3d 1253, 1260 n.3 (Ala. Civ. App. 2017).

Analysis of whether § 40-1-45 dictates that a payment sent via certified mail must be presumed made on the date of the postmark on the certified-mail receipt properly begins with the statutory text. Section 40-1-45, in relevant part, provides:

> "(a) General rule.
>
> > "(1) Date of Delivery. If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this title [i.e., Title 40, Ala. Code 1975] is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.
> >
> > "....
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> "....
>
> "(c) Registered and certified mailing.
>
> > "(1) Registered Mail. For purposes of this section, if any such return, claim, statement, or

> other document, or payment, is sent by United States registered mail
>
> > "a. Such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office addressed to, and
> >
> > "b. The date of registration shall be deemed the postmark date.
>
> "(2) Certified Mail. The Department of Revenue is authorized to provide by regulations the extent to which the provisions of subdivision (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.
>
> "(d) Exceptions. This section shall not apply with respect to
>
> "....
>
> "(2) Currency or other medium of payment unless actually received and accounted for ...."

(Emphasis added.)

Notably, § 40-1-45 does not specifically prescribe any procedures pertaining to certified mail but, instead, delegates authority to the Department of Revenue to "provide by regulations the extent to which

the provisions of subdivision (1) of [§ 40-1-45(c)] with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail." § 40-1-45(c)(2).

The Department of Revenue, moreover, has promulgated a regulation pursuant to § 40-1-45 that governs cases, like the instant one, involving certified mail. As relevant here, r. 810-1-5-.01(3), Ala. Admin. Code (Dep't of Revenue), provides:

> "(3)(a) If the return, claim statement, other document or payment is sent by United States registered mail, such registration shall be prima facie evidence that the return, claim, statement, other document or payment was delivered and the date of registration shall be deemed the postmark date.
>
> "(b) If the return, claim, statement, other document or payment is sent by United States certified mail, return receipt requested showing to whom and when delivered; and the receipt reflects receipt of the mailing by the proper official, the mailing will be considered as if sent by registered mail as provided in subparagraph (a) above."

(Emphasis added.) Crucially, the provisions in § 40-1-45 concerning prima facie evidence of delivery and the postmark date apply only to certified mail when (1) a return receipt was requested, (2) the return

receipt reflects delivery, the time of delivery, and the identity of the recipient, and (3) the recipient was the proper official. We further note that the mailing date is considered to be the delivery date of a payment under § 40-1-45(a)(1) only if that payment is actually received by the proper official. Shoals Mill, 238 So. 3d at 1260 n.3; see also State v. Mann, 653 So. 2d 314, 315 (Ala. Civ. App. 1994).

Here, it is undisputed that the Commissioner never received the initial payment, and Atwood has not alleged that it used registered mail or requested return-receipt service from the USPS; therefore, the presumption of delivery afforded by § 40-1-45(c) is inapplicable.[5]

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[5]This conclusion is buttressed by the interpretation and application of § 40-1-45 to factually similar circumstances by the Alabama Tax Tribunal, and its predecessor, the Alabama Department of Revenue Administrative Law Division. See Tamor Supersaver, Inc. v. Alabama Dep't of Revenue, Docket No. S. 04-356, June 21, 2004 (Ala. Dep't of Revenue Admin. L. Div. 2004) (Final Order) (finding that accountant's affidavit averring that he timely mailed letter did not establish timely filing because there was no postmarked envelope in evidence and the alleged mailing failed to meet the other specified requirements of the "mailbox rule" in § 40-1-45); see also Michelin North America, Inc. v. Alabama Dep't of Revenue, Docket No. F. 00-154, Sept. 15, 2017 (Ala. Tax Trib. 2017) (Opinion and Preliminary Order) (concluding that § 40-1-45 "controls concerning the receipt of any document required to be filed with the Department by a date certain").

Thus, pursuant to § 40-1-45 and the applicable regulation promulgated by the Department of Revenue, Atwood is not entitled to a statutory presumption of delivery or payment, and, accordingly, Atwood's jurisdictional averments were facially insufficient to establish the trial court's subject-matter jurisdiction under § 40-3-25.

Conclusion

For the reasons stated above, we grant the Board's petition for a writ of mandamus and direct the trial court to enter an order granting the Board's motion to dismiss Atwood's appeal for lack of subject-matter jurisdiction.

PETITION GRANTED; WRIT ISSUED.

Mitchell, J., concurs.

Shaw, Wise, and Bryan, JJ., concur in the result.

Mendheim, J., concurs in the result, with opinion.

Parker, C.J., dissents.

Sellers, J., dissents, with opinion, which Bolin, J., joins.

MENDHEIM, Justice (concurring in the result).

I agree with the main opinion's conclusion that the appeal by Atwood Drilling, Inc. ("Atwood"), which challenged the final tax assessment on Atwood's property by the Mobile County Board of Equalization ("the Board"), is due to be dismissed because Atwood did not pay the assessed taxes before they became delinquent. However, I disagree with the conclusion that the dismissal is required based on a lack of subject-matter jurisdiction and, therefore, I concur in the result.

The statute at issue, § 40-3-25, Ala. Code 1975, provides, in pertinent part:

> "All appeals from the rulings of the board of equalization fixing value of property shall be taken within 30 days after the final decision of said board fixing the assessed valuation as provided in this chapter [i.e., Ala. Code 1975, Title 40, Chapter 3]. The taxpayer shall file notice of said appeal with the secretary of the board of equalization and with the clerk of the circuit court and shall file bond to be filed with and approved by the clerk of the circuit court, conditioned to pay all costs, and the taxpayer or the state shall have the right to demand a trial by jury by filing a written demand therefor within 10 days after the appeal is taken. When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same becomes delinquent; and, upon failure to do so, the court upon

> motion ex mero motu must dismiss the appeal, unless at the time of taking the appeal the taxpayer has executed a supersedeas bond with sufficient sureties to be approved by the clerk of the circuit court in double the amount of taxes, payable to the State of Alabama, conditioned to pay all taxes, interest, and costs due the state, county, or any agency or subdivision thereof. Such appeals shall be preferred cases. ..."

The first sentence of § 40-3-25 provides the period within which an appeal of a tax assessment must be made: within 30 days of the final ruling of the appropriate board of equalization. The second sentence provides two further prerequisites for perfecting such an appeal: (1) filing a notice of appeal with the appropriate board and with the appropriate circuit clerk and (2) filing an appeal bond. The third sentence describes a requirement a taxpayer must fulfill in order for a perfected appeal to remain pending in the circuit court into the following calendar year if a supersedeas bond is not executed when the appeal is filed: the taxpayer must pay the taxes due as stated in the assessment before the taxes become delinquent, i.e., before January 1 of the year following the tax-assessment year. If the taxpayer fails to pay the assessed taxes before

they become delinquent, and the appeal is still pending, then § 40-3-25 requires the circuit court to dismiss the appeal.

The foregoing sequence of the procedures described in § 40-3-25 illustrates why a failure to pay the assessed taxes in a timely manner does not deprive the circuit court of subject-matter jurisdiction over a taxpayer's appeal. In State v. Crenshaw, 287 Ala. 139, 249 So. 2d 622 (1971), this Court addressed the question whether, under Title 51, § 110, Ala. Code 1940 (1958 Recomp.), the identically worded predecessor statute to § 40-3-25, a taxpayer who does not execute a supersedeas bond must pay the assessed taxes at the time the taxpayer commences the appeal in order to perfect the appeal.

> "Construing Section 110, ... this Court concludes that where no supersedeas bond is filed, the payment of taxes by the appealing taxpayer, ordinarily, is a condition subsequent, not a condition precedent, which must be satisfied '… before the same becomes delinquent ….' In the case under review, the Taxpayer Crenshaw, appealing under the provisions of Section 110, supra, had the right to pay the taxes at any time before January 1, 1970.
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> "This Court re-affirms what was said in [State v.] Golden[, 283 Ala. 706, 220 So. 2d 893 (1969),] as to the requirement that, on an appeal on assessment under the

> provisions of Section 110, supra, the taxpayer (if no supersedeas bond is filed) shall pay the taxes due as fixed for assessment for the preceding tax year. To the extent that Golden requires (in the absence of a supersedeas bond) that such taxes must be paid as a condition precedent to the taking of an appeal under the provisions of Section 110, supra, when the appeal is taken prior to the delinquent date for the payment of taxes, it is expressly overruled."

Crenshaw, 287 Ala. at 142-43, 249 So. 2d at 624 (some emphasis added).

In short, the Crenshaw Court concluded that the statute allows a taxpayer to make the tax payment at any time before the assessed taxes become delinquent, a date which certainly could be after the taxpayer has commenced the appeal. However, applying the main opinion's conclusion would mean that if an appealing taxpayer fails to pay the taxes by the delinquency deadline, the circuit court has subject-matter jurisdiction when the appeal is filed, but then subsequently loses subject-matter jurisdiction months later when the deadline for delinquency passes. That is not how this Court ordinarily perceives subject-matter jurisdiction.

> "Subject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ('"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought."' (quoting Cooper v. Reynolds, 77 U.S. (10

> Wall.) 308, 316, 19 L.Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United States v. Cotton, 535 U.S. 625, 630-31, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) (subject-matter jurisdiction refers to a court's 'statutory or constitutional power' to adjudicate a case)."

Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006).

Here, subject-matter jurisdiction over appeals of final assessments from county boards of equalization is conferred upon circuit courts by § 40-3-24, Ala. Code 1975.[6] Section 40-3-25 then details the procedures required to perfect and to maintain an appeal of such final assessments. Because this Court has said that "[t]he right of appeal in tax proceedings is a right conferred by statute and must be exercised in the mode and within the time prescribed by the statute," Denson v. First Nat'l Bank of

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[6]Section 40-3-24, Ala. Code 1975, provides:

> "In cases where objection has been made by any taxpayer, his agent or attorney, as provided herein, to the taxable value fixed by the board of equalization on any property assessed against such taxpayer, and such objections have been overruled by said board, such taxpayer, his agent or attorney may take an appeal from the action of said board in overruling his objection to such valuation to the circuit court of the county in which the taxpayer's property is located."

Birmingham, 276 Ala. 146, 148, 159 So. 2d 849, 850 (1964), the Court has deemed that it follows that the failure to fulfill the requirements necessary to perfect an appeal of a tax assessment implicates the appellate court's subject-matter jurisdiction. See, e.g., State, Dep't of Revenue v. Welding Eng'g & Supply Co., 452 So. 2d 1340, 1342 (Ala. Civ. App. 1984) (noting that "[w]hen the legislature has prescribed the means and method of perfecting an appeal from a tax assessment to the circuit court, that procedure must be followed" and that perfecting such an appeal "is a jurisdictional requirement, and there must be compliance with it before a circuit court has jurisdiction over the subject matter, the appeal"). Perfecting a tax appeal in accordance with the first two sentences of § 40-3-25 invokes the circuit court's jurisdiction under § 40-3-24. Therefore, it does not follow that Atwood's failure to pay the assessed taxes at issue before the delinquency date deprived the Mobile Circuit Court of subject-matter jurisdiction, even though, under the third sentence of § 40-3-25, the circuit court was required to dismiss Atwood's

appeal once it became clear that Atwood had failed to pay the taxes before the delinquency date.

The main opinion's basis for holding that Atwood's failure to pay the taxes before the delinquency date deprived the Mobile Circuit Court of jurisdiction of the appeal appears to be based on this Court's decisions in Ex parte Shelby County Board of Equalization, 159 So. 3d 1 (Ala. 2014), and Lumpkin v. State, 171 So. 3d 599 (Ala. 2014). But those cases concern the steps § 40-3-25 requires for perfecting (initiating) an appeal, not for maintaining it.

In Shelby County Board of Equalization, this Court addressed the question whether the Shelby Circuit Court lacked subject-matter jurisdiction over an appeal by Central Shelby LTD. ("Central Shelby"), which challenged a final property-tax assessment by the Shelby County Board of Equalization ("the Shelby Board"), because Central Shelby had filed a notice of appeal with the Shelby Circuit Court but had not simultaneously filed a notice of appeal with the Shelby Board. This Court explained:

> "Central Shelby argues that it properly invoked the trial court's jurisdiction by taking the underlying appeal to the appropriate circuit court within 30 days of the challenged final assessment. But that is not what § 40-3-25 or the foregoing authorities require. Central Shelby faults the circuit clerk for her alleged untimely mailing of the notice of appeal to the secretary of the Board. However, the Code section clearly charges the appealing taxpayer with the responsibility of filing the notice of appeal with the secretary of the Board.
>
> "....
>
> "As a result of Central Shelby's failure to comply with the provisions of § 40-3-25, its appeal was not perfected and the trial court's jurisdiction was never invoked. Therefore, the appeal was due to be dismissed as the Board requested."

Ex parte Shelby Cnty. Bd. of Equalization, 159 So. 3d at 4. Atwood did not fail to file a notice of appeal with both the Mobile Circuit Court and with the Board, so Shelby County Board of Equalization does not speak to the situation presented in this case.

In Lumpkin, Edwin B. Lumpkin, Jr., appealed three property-tax assessments made by the Jefferson County Board of Equalization and Adjustments ("the Jefferson Board") to the Jefferson Circuit Court on November 16, 2012. However, "Lumpkin did not file the bonds required

by § 40-3-25 until April 4, 2014," in response to a motion to dismiss filed by the State of Alabama. Lumpkin, 171 So. 3d at 600. The Lumpkin Court noted:

> "Lumpkin adequately states the issue before this Court in these appeals as follows:
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> > "'Whether the requirement for payment of security for costs in [§ 40-3-25] is procedural (an interpretation that is consistent with other areas of appellate practice) or jurisdictional, and therefore required to perfect an appeal.'
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> "Lumpkin's briefs, at p. 4."

Lumpkin, 171 So. 3d at 601. Lumpkin argued that the failure to file a cost bond should be viewed as a procedural defect rather than a jurisdictional one because that is how it is generally viewed in other appellate proceedings. But the Lumpkin Court, relying on Shelby County Board of Equalization, disagreed.

> "The specific issue in Ex parte Shelby County Board of Equalization was whether the notice of appeal had to be filed with the secretary of the board of equalization (as well as the circuit court) within 30 days of the final assessment -- not whether the required bond had to be filed within that same time frame -- but our opinion made clear that all the

> requirement[s] of § 40-3-25 had to be timely met in order to properly invoke the trial court's jurisdiction. …
>
> "'....'
>
> ".... The Court of Civil Appeals has similarly interpreted § 40-3-25 when considering the exact issue we now confront. See Canoe Creek Corp. v. Calhoun Cnty. Bd. of Equalization, 668 So. 2d 826, 827 (Ala. Civ. App. 1995) ('[W]e have never held that strict compliance with a statutory requirement of filing a cost bond in a tax case is not necessary.'). We now adhere to our previous holding in Ex parte Shelby County Board of Equalization and reaffirm that the unambiguous language of § 40-3-25 mandates that the required bond be filed within 30 days after the final decision fixing the assessed valuation in order to perfect an appeal pursuant to that statute."

171 So. 3d at 601-03. Atwood did not fail to file a cost bond when it appealed the Board's tax assessment to the Mobile Circuit Court, so the holding in Lumpkin does not speak to the situation presented in this case.

Unfortunately, both Shelby County Board of Equalization and Lumpkin contain some overly broad language with respect to § 40-3-25 that was not required for their holdings. In Shelby County Board of Equalization, the Court stated:

> "In light of the plain language of [§ 40-3-25], this Court finds persuasive the Board's reliance on the analysis of the Court of Civil Appeals in State v. Crenshaw, 47 Ala. App. 3, 249 So. 2d

> 617 (1970), in which, in considering the identical language of the predecessor statute to § 40-3-25, that court explained:
>
> > "'[A] taxpayer may perfect an appeal from a final assessment of the Board so long as he files, within thirty days, a notice of appeal with the Secretary of the Board and Clerk of the Circuit Court, a bond for costs, and, either files a supersedeas bond, or pays the taxes based on the prior year's assessment. Such a construction would require that all of these procedures would have to be complied with at the same time for the appeal to be perfected.'
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> "47 Ala. App. at 5, 249 So. 2d at 619."

159 So. 3d at 3 (emphasis omitted; emphasis added). That was a misinterpretation of the holding in State v. Crenshaw, 47 Ala. App. 3, 249 So. 2d 617 (Civ. 1970) ("Crenshaw I"), an opinion on direct appeal that this Court subsequently evaluated and affirmed in State v. Crenshaw, 287 Ala. 139, 249 So. 2d 622 (1971) ("Crenshaw II") -- a case I quoted earlier in this writing. The passage from Crenshaw I that Shelby County Board of Equalization quoted was recounting the argument of the appellants in that case before the Court of Civil Appeals went on to reject that argument and to agree with the argument presented by the appellee.

> "Appellee contends that the Supreme Court erred in [State v.] Golden[, 283 Ala. 706, 220 So. 2d 893 (1969)], by not giving effect to the phrase 'before the same becomes delinquent,' because this provision really gives a dissatisfied taxpayer two methods for taking an appeal. One way is to file notice with the Board and the Clerk, give bond for costs, and file a supersedeas bond; the other way would be to take all of the above steps, except in the place of the filing of a supersedeas bond, the taxpayer would simply pay the taxes based on the prior year's assessment.
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> "In the one instance, all steps would be accomplished at one time, whereas in the other instance -- the payment of the taxes -- the last step in the process could be delayed for approximately six months, and, in such a situation, the trial could have been held and a judgment rendered, all before the taxes are required to be paid. Yet, that is precisely what the Legislature authorized to be done in very simple, concise and, we think, cogent language.
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> "....
>
> "We are, therefore, of the opinion that the Legislature by the use of this phrase, intended to give a taxpayer the opportunity of delaying the payment of his taxes beyond the time limit for performing the other procedures required to perfect an appeal from a contested ad valorem tax assessment; and it is our further opinion that the trial court acted properly in overruling appellant's motion to dismiss the appeal filed by the taxpayer in the Circuit Court for the reason that the taxes were paid before the same became delinquent."

Crenshaw I, 47 Ala. App. at 6, 249 So. 2d at 620 (emphasis added).

Thus, the Court of Civil Appeals in Crenshaw I held, as this Court did in Crenshaw II, that a taxpayer is not required under § 40-3-25 to pay the assessed taxes at the time of appeal but, rather, is permitted to pay them at any time before the taxes become delinquent. Crenshaw I never stated that all the procedures described in § 40-3-25 had to be complied with in order to invoke the circuit court's jurisdiction, and Crenshaw II, as I noted earlier, expressly held that "the payment of taxes by the appealing taxpayer, ordinarily, is a condition subsequent, not a condition precedent, which must be satisfied '… before the same becomes delinquent ….'" Crenshaw II, 287 Ala. at 142, 249 So. 2d at 624 (emphasis omitted).

In short, to the extent that Shelby County Board of Equalization understood Crenshaw I to be supporting the idea that the failure of an appellant to pay assessed taxes before they become delinquent deprives the circuit court of appellate jurisdiction, the Court was mistaken. Likewise, the Lumpkin Court's statement that "our opinion [in Shelby County Board of Equalization] made clear that all the requirement[s] of

§ 40-3-25 had to be timely met in order to properly invoke the trial court's jurisdiction," 171 So. 3d at 601, must be read with that misunderstanding of Crenshaw I in mind. Crenshaw I does not support the broad language in Lumpkin, and, more importantly, neither does § 40-3-25, which separates the initial requirements of timely filing the notice of appeal with the appropriate circuit court and with the appropriate tax board and paying the cost bond from the subsequent requirement of paying the assessed taxes before they become delinquent if no supersedeas bond has been executed. That understanding of § 40-3-25 was cogently explained by Judge L. Charles Wright in his special concurrence in Crenshaw I:

> "No appeal statute requires the filing of supersedeas for perfection of appeal. That is always the choice of the appellant. Supersedeas bond merely prevents collection or performance of a judgment by issuance of execution as required by appropriate statute.
>
> "If the legislature had intended the payment of assessment as a condition precedent to perfecting an appeal in Section 110, it could easily have said so. Instead it provided for taking the appeal and then stated 'When an appeal is taken the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same becomes delinquent, and upon failure to do so, the court upon motion ex mero motu must dismiss the appeal, unless at the

time of taking the appeal the taxpayer has executed a supersedeas bond ....' (Emphasis ours.)

"It appears clear to me that the above quoted provisions of Section 110 mean[] that the appeal has been perfected and is before the circuit court and will remain so until the taxes become delinquent -- to-wit -- after December 31 of the tax year -- as provided by Title 51, Section 189. If the matter is not tried before January 1, nor the taxes, based on preceding year's assessment paid before that date, then the appeal, previously perfected and fully before the court, will be dismissed on motion ex mero motu. How could an appeal be before the court for dismissal if conditions precedent to perfection had not been fulfilled?

"Our interpretation is further supported by the proviso in the section that the appeal must be dismissed -- 'Unless at the time of taking the appeal the taxpayer has executed a supersedeas bond.' (Emphasis ours.) It appears obvious that the purpose of the legislature in enacting the last provisions of this statute was to insure that taxes would either be paid by the appellant, as by all other taxpayers -- before becoming delinquent, or that security be provided that they would be paid if judgment was rendered.

"Any other interpretation would require an appealing taxpayer to pay taxes before they even became due. Such a requirement would place a greater burden upon an appealing taxpayer than upon others. This could be done, but we do not believe the legislature intended to do so. It would confuse the record keeping of the tax collector, who is not otherwise lawfully authorized to accept taxes before they become due. The tax collector was confused in this case and refused to

> accept the tender of taxes by appellant based on preceding year assessment.
>
> "I am committed to the belief that the legislature by using the word 'When' in stating, 'When an appeal is taken ...' intended it to mean after. This interpretation is completely supported by the full reading of the statute."

47 Ala. App. at 7, 249 So. 2d at 621-22 (Wright, J., concurring specially) (some emphasis added).

I agree with Judge Wright. Payment of the assessed taxes is not a condition precedent to perfecting an appeal of the assessment and, therefore, to invoking the circuit court's subject-matter jurisdiction. However, if payment is not made before the taxes become delinquent, as I believe to be the case here, then § 40-3-25 clearly mandates that the circuit court must dismiss the taxpayer's appeal. Such a dismissal is procedurally mandated, but it does not implicate the circuit court's subject-matter jurisdiction. Because the circuit court lacked discretion on the question whether to dismiss the appeal under § 40-3-25, I believe that mandamus was still an appropriate remedy, and I agree that the petition is due to be granted. Therefore, I concur in the result.

SELLERS, Justice (dissenting).

I respectfully dissent from the decision to issue a writ of mandamus directing the trial court to grant the motion to dismiss filed by the Mobile County Board of Equalization ("the Board"). Section 40-1-45(a)(1), Ala. Code 1975, provides, in relevant part, as follows:

> "If … any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this title [i.e., Title 40, Ala. Code 1975] is, after such period or such date, delivered by United States mail to the agency, officer, or office … to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such … payment[] is mailed shall be deemed to be … the date of payment …."

Thus, when tax payments are mailed, the postmark date is deemed to be the date of payment. The taxpayer in this case, Atwood Drilling, Inc. ("Atwood"), claims that it mailed to the Mobile County Revenue Commissioner a check on December 10, 2020, via United States certified mail, which was approximately three weeks before the taxes were due.

Subsection (c)(1)b. of § 40-1-45 provides that, if a payment is sent by United States registered mail, "[t]he date of registration shall be deemed the postmark date." The Alabama Department of Revenue is

authorized to provide by regulation the extent to which certified mail will be treated like registered mail. § 40-1-45(c)(2). Consistent with § 40-1-45(c), a Department regulation, r. 810-1-5-.01(3)(a), Ala. Admin. Code (Dep't of Revenue), provides that, if a tax payment is sent by registered mail, "the date of registration shall be deemed the postmark date." Thus, a payment sent by registered mail will be deemed postmarked, and therefore delivered, on the "date of registration." Under the same regulation, "[i]f the … payment is sent by United States certified mail, return receipt requested showing to whom and when delivered; and the receipt reflects receipt of the mailing by the proper official, the mailing will be considered as if sent by registered mail." 810-1-5-.01(3)(b).[7]

As the main opinion notes, Atwood used certified mail but did not request a return receipt. But even if Atwood is not entitled to the benefits bestowed on certified and registered mailers under § 40-1-45(c) and the

[7]A federal regulation dealing with the same subject matter reveals the policy behind treating registered and certified mail differently than regular mail: "[T]he risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail." 27 C.F.R. § 70.305(c)(2).

accompanying regulation, the postmark date (as opposed to the "date of mailing") still should be deemed the date of payment under § 40-1-45(a)(1). Section 40-1-45(a)(1) refers to the date of the postmark that is "stamped on the cover in which such … payment[] is mailed." Although we have not been presented with the actual envelope in which the check was allegedly mailed, Atwood did submit evidence in the form of an affidavit and a certified-mail receipt, which itself bears a postmark, suggesting that Atwood mailed the payment on December 10, 2020, approximately three weeks before the taxes became due. Thus, there is evidence suggesting that the postmark on the envelope was dated before the taxes were due. There at least appears to be questions of fact regarding when Atwood mailed the tax payment and the postmark date, which should be sufficient to survive a motion to dismiss.

The Board's request for mandamus relief is based entirely on subsection (d)(2) of § 40-1-45, which provides that that statute does not apply with respect to "[c]urrency or other medium of payment unless actually received and accounted for." According to the Board, it did not

receive the check that Atwood claims it mailed in December 2020.[8] First, as Atwood points out in response to the Board's mandamus petition, the Board did not submit evidence affirmatively establishing that it did not receive the check Atwood claims it mailed. Instead, the Board submitted a record from the Mobile County Revenue Commissioner indicating that Atwood had not been given credit for the tax payment and still owed the taxes. In addition, it is undisputed that the Board did receive payment of the assessed taxes when Atwood wrote a second check in response to a delinquent-tax bill.

In evaluating at the motion-to-dismiss stage whether there is any basis for the trial court to resolve the matter, we should consider the entire status of the litigation, i.e., all the evidence submitted to the trial court. In the present case, the trial court held a hearing and had before it evidence that could lead a reasonable judge to conclude that the matter should not be dismissed. There is evidence indicating that Atwood mailed the Board a check in December 2020; there is a postmark date of

[8]The parties agree that a check should be considered a "medium of payment" for purposes of this case.

December 10, 2020, on the certified-mail receipt, which suggests that the envelope containing the check bore a postmark dated before the taxes were due; there is no evidence affirmatively establishing that the original check was never received by the Board; and it is conceded that the Board did indeed receive a check for the payment of Atwood's taxes.[9] Mandamus is a drastic and extraordinary remedy, and I do not believe the Board has met its burden of demonstrating a clear legal right to the dismissal of Atwood's appeal in the trial court. Accordingly, I dissent.[10]

Bolin, J., concurs.

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[9]Moreover, the trial court undoubtedly was familiar with the problems with service of process by mail created by the COVID-19 pandemic.

[10]I also note that a property valuation for the assessment of ad valorem taxes is an annual recurring event. Absent a significant change in value, the dispute of an assessment in one year would be similar to a dispute in a subsequent year. Dismissing this action accomplishes very little, because a taxpayer disputing a valuation can simply wait until the next year to pursue the same dispute in another appeal. At some point, the holding of the main opinion notwithstanding, the taxpayer will have its day in court and the value of the property will be confirmed as assessed or reduced. Strictly from a standpoint of judicial economy, dismissing the case only postpones a determination of value for another year.