REL: June 30, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190951

Lem Harris Rainwater Family Trust, Charles Edward Rainwater, Jean Rainwater Loggins, and Rainwater Marital Trust

v.

Lenn Rainwater

1190952

Lem Harris Rainwater Family Trust, Charles Edward Rainwater, Jean Rainwater Loggins

v.

Lenn Rainwater

Appeals from St. Clair Circuit Court
(CV-18-900281)

MITCHELL, Justice.

These appeals spring from a legal dispute between four siblings about the management of trusts set up by their parents. The siblings -- Lenn Rainwater ("Lenn"), Charles Edward Rainwater ("Charles"), Jean Rainwater Loggins, and Mary Rainwater Breazeale -- executed a settlement agreement resolving their dispute, but, in appeal no. 1190952, we are asked to consider whether that agreement should be declared void. Lenn has also sought to garnish trust assets that she says are hers; in appeal no. 1190951, we are asked to decide whether those garnishment proceedings should be quashed. But we ultimately do not reach either of those issues because both appeals are due to be dismissed -- appeal no. 1190952 was filed too late and appeal no. 1190951 was filed too soon.

Facts and Procedural History

Lem Rainwater ("Lem") and Jean Rainwater ("Jean") had four children -- Lenn, Charles, Loggins, and Breazeale. In 1995, Lem and Jean

set up the Lem Harris Rainwater Family Trust ("the Family Trust"). The terms of the Family Trust provided that when one of them died, the trust assets would be split so that the deceased parent's assets would go into the Rainwater Bypass Trust and the remaining assets would go into the Rainwater Marital Trust ("the Marital Trust").[1] Jean died in 2007; Lenn alleges that it is not clear how and if her parents' assets in the Family Trust were actually divided into the two other trusts at that time.

In January 2009, Lem executed a document purporting to restate the terms of the Marital Trust. Among other things, this restatement provided that each of the siblings would receive certain real property upon his death. Notably, Lenn was to receive all rights to Victorian Village, a shopping center in Sylacauga. Lem restated the Marital Trust on two more occasions, in November 2011 and in April 2013.

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[1]A bypass trust is a tax-savings entity "into which just enough of a decedent's estate passes, so that the estate can take advantage of the unified credit against federal estate taxes." Black's Law Dictionary 1818 (11th ed. 2019). A bypass trust allows trust beneficiaries, usually the settlors' children, to obtain the property of the first spouse to die, although the surviving spouse is given a life interest in that property. Id. "Upon the last spouse's death, all the trust property passes to the trust beneficiaries outside the estate-tax regime." Id.

After Lem's death in 2015, the siblings, who serve as cotrustees of each of the trusts, disagreed about the effects of certain provisions in the trust documents. Lenn specifically questioned the validity of certain changes made by Lem when he restated the terms of the Marital Trust in April 2013, as well as the fact that rents paid by tenants at Victorian Village were being collected and treated as trust assets instead of being remitted to her. In November 2018, Lenn sued her siblings and the Family Trust in the St. Clair Circuit Court seeking a judgment declaring their rights under the trust documents and determining the ownership interests of the siblings in certain trust assets.

The trial court ordered the siblings to mediate their dispute. It initially appeared that the mediation was successful because, on November 21, 2019, all four siblings executed a settlement agreement. That agreement stated that its terms were to remain confidential, but it generally provided that, "[w]ithin 30 days," a cash payment and all rights to Victorian Village would be transferred to Lenn. It also required the parties to execute releases waiving any claims they had against each other.

For reasons that are not entirely clear, the parties did not satisfy their respective obligations within the 30-day period set out in the settlement agreement. Charles, Loggins, and Breazeale then moved the trial court to declare the settlement agreement void because, they alleged, Lenn had violated its confidentiality provision and refused to execute the required releases. On February 12, 2020, the trial court entered an order holding that the settlement agreement was due to be enforced and directing the parties, within the next 30 days, "to perform each and every act and to execute any and all documents necessary or expedient to evidence and consummate the mediation settlement agreement as heretofore agreed by the parties."

On March 12, 2020, Lenn filed notice stating that she had executed all the documents required by the settlement agreement and alleging that Charles and Loggins were refusing to do the same. That same day, Charles and Loggins -- who had dismissed their previous legal counsel and retained attorney Jerry M. Blevins to represent them -- filed a motion stating that they understood the trial court's February 12 order "to be a final order subject to Rule 59, Ala. R. Civ. P.," and asking the trial court

to alter, amend, or vacate that order in accordance with Rule 59. Breazeale -- still represented by the same counsel who had represented all three defendant siblings and the Family Trust during the mediation -- filed a response stating that she was no longer challenging the settlement agreement and that she had executed all the documents the agreement required.

On April 20, 2020, the trial court denied Charles and Loggins's motion and again ordered the parties to perform their obligations under the settlement agreement. Two days later, Blevins filed a notice of appearance purporting to represent the Family Trust. Lenn and Breazeale then filed separate responses denying that he represented the Family Trust; Breazeale further alleged that her attorneys already represented the Family Trust and that their representation had never been terminated.

On May 6, 2020, Blevins filed a notice of appeal challenging the trial court's February 12 order directing the parties to comply with the settlement agreement; that notice listed the Family Trust as an appellant along with Charles and Loggins. The next day, Blevins filed a motion

with the trial court asserting that it had lost jurisdiction to conduct further proceedings in the case -- including the authority to rule on whether he properly represented the Family Trust -- because of the pending appeal. At a hearing conducted later that day to clarify its jurisdiction, the trial court identified another jurisdictional issue -- whether its February 12 order directing the parties to comply with the settlement agreement was a final judgment that could support an appeal.

In a written order, the trial court concluded that it was. But, the court explained, even if the order was instead an interlocutory order granting injunctive relief, it was still appealable. See Rule 4(a)(1)(A), Ala. R. App. P. (authorizing the appeal of "any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction"). The court further concluded that, based on the pending appeal, it no longer had jurisdiction to decide which attorneys were representing the Family Trust.

Two weeks later, Lenn served a process of garnishment on Regions Bank. Consistent with the discussion at the May 7 hearing, Lenn alleged that a final judgment had been entered in her favor on February 12, and that Regions Bank was holding assets in an account belonging to the

Marital Trust that she was entitled to recover to satisfy that judgment. Regions Bank filed an answer stating that it would hold the sum claimed by Lenn "until the court orders release or payment or until [the] funds are remitted per statute." Blevins -- purporting to represent the Marital Trust as well as Charles, Loggins, and the Family Trust -- then moved the trial court to quash the garnishment proceedings. The trial court denied that motion, and Blevins filed another notice of appeal, listing Charles, Loggins, the Family Trust, and the Marital Trust as appellants and seeking appellate review of that order.[2]

Appeal no. 1190952

Before considering the issue that Charles, Loggins, and the Family Trust raise in this appeal -- whether the trial court's February 12 order enforcing the settlement agreement should be reversed because of Lenn's alleged breach of that agreement -- we must address whether we have

[2]Whether Blevins is properly representing the Family Trust and the Marital Trust is an issue that has not been decided by the trial court. We express no opinion on that issue, but, because Blevins purported to file the notices of appeal on behalf of those entities, we treat them as appellants in this opinion.

jurisdiction to do so. See Nettles v. Rumberger, Kirk, & Caldwell, P.C., 276 So. 3d 663, 666 (Ala. 2018) (explaining that jurisdictional matters are of such importance that an appellate court may take notice of them even when they have not been raised by the parties). A review of the procedural history of the case reveals that we lack jurisdiction.

At the hearing to consider whether Blevins was properly representing the Family Trust, the trial court discussed whether its February 12 order was a final judgment. The court ultimately held that it was but concluded that the order was appealable in any event based on this Court's decision in Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683 (Ala. 2009) . In that case, a plaintiff who had been assaulted at a fraternity party settled his lawsuit with a national fraternity and its local chapter, but there was later disagreement about whether that settlement encompassed his claims against the individuals who had assaulted him. 40 So. 3d at 687. The trial court in that case granted the plaintiff's motion to enforce the settlement agreement in accordance with his interpretation, directing him "to execute a release compliant with the court's findings and order[ing] the chapter to 'tender the settlement proceeds to [the plaintiff's]

counsel.' " Id. at 689. The chapter did not comply with the trial court's order and instead filed an appeal three days later. Id.

The plaintiff moved to dismiss the appeal as being from a nonfinal judgment. In addressing that motion, this Court discussed the nature of the order being appealed and agreed that it was an interlocutory order granting injunctive relief as opposed to a final judgment. Id. at 690 ("Because the ... order commands the chapter to take action, we conclude that it is injunctive in nature."). But, the Court explained, an appeal can be taken from an interlocutory order granting an injunction. See Rule 4(a)(1)(A) (authorizing a party to file a notice of appeal "within 14 days (2 weeks) of the date of the entry of ... any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction"). The Court therefore denied the plaintiff's motion to dismiss the chapter's appeal -- which had been filed just three days after the entry of the order enforcing the settlement agreement -- and proceeded to consider the merits of the case. Kappa Sigma, 40 So. 3d at 689.

Based on Kappa Sigma, it is clear that the trial court in this case erred to the extent it held that its February 12 order was a final

judgment. That order was injunctive in nature -- because it commanded the parties to take specific action -- but it was not a final judgment.[3] See Dawkins v. Walker, 794 So. 2d 333, 335 (Ala. 2001) ("An injunction is defined as '[a] court order commanding or preventing an action.' Black's Law Dictionary 788 (7th ed. 1999)."). The trial court nevertheless correctly noted that the February 12 order was appealable under Rule 4(a)(1)(A). Under that rule, any such appeal must be filed "within 14 days (2 weeks) of the date of the entry of the order or judgment appealed from." Here, the order granting injunctive relief was entered on February 12, but no notice of appeal was filed until May 6, well outside the 14-day period allowed by Rule 4(a)(1)(A).[4] Because the notice of appeal was untimely,

[3]This is not to imply that an injunctive order can never constitute a final judgment. For example, in Consolidated Electrical Contractors & Engineers, Inc. v. Center Stage/Country Crossing Project, LLC, 175 So. 3d 642, 649 (Ala. Civ. App. 2015), the Court of Civil Appeals properly held that a trial court's order dissolving an injunction was a final judgment subject to the general 42-day time period for filing an appeal. But, unlike the case now before us, the complaint that initiated that action sought only injunctive relief and did not assert any underlying claims. Thus, that court explained, the injunctive order "adjudicated the only claim asserted in the action." Id.

[4]We recognize that Charles and Loggins purported to file a Rule 59 postjudgment motion challenging the trial court's February 12 order on

we must dismiss the appeal. Beatty v. Carmichael, 293 So. 3d 874, 877 (Ala. 2019); see also Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court.").

Appeal no. 1190951

Charles, Loggins, the Family Trust, and the Marital Trust argue in this appeal that the garnishment proceedings should have been quashed. We must first address our jurisdiction to consider their argument. Nettles, 276 So. 3d at 666.

March 12. Under Rule 4(a)(3), Ala. R. App. P., a postjudgment motion filed under Rule 59 will toll the time for filing a notice of appeal. But one cannot properly file a Rule 59 "postjudgment" motion directed to an interlocutory order that is not a final "judgment." See Momar, Inc. v. Schneider, 823 So. 2d 701, 706 (Ala. Civ. App. 2001) (holding that a purported Rule 59 motion did not operate to extend the time for taking an appeal under Rule 4(a)(1)(A)). This Court does not appear to have previously addressed this issue, but we agree with the substance of the Court of Civil Appeals' holding in Momar. It would be inconsistent with our caselaw emphasizing the necessity of a timely filed notice of appeal to permit a party to resurrect a right to appeal by filing a motion to alter, amend, or vacate two weeks after the period for filing an appeal had already expired.

With regard to garnishment proceedings, § 6-6-464, Ala. Code 1975, provides that "[a]n appeal lies to the supreme court or the court of civil appeals, as the case may be, at the instance of the plaintiff, the defendant, the garnishee, or the contestant, or claimant." The caselaw interpreting § 6-6-464 makes clear, however, that such an appeal will lie only when there has been a final judgment. In Miller Construction, LLC v. DB Electric, [Ms. 2190467, Jan. 15, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021), the Court of Civil Appeals considered an appeal with a factual and procedural history substantially similar to this appeal and concluded that the appeal was premature. In that case, the garnishers commenced garnishment proceedings against the defendants, which then moved the trial court to quash those proceedings. The trial court denied the motion to quash but did not take any other action. After the defendants filed their notice of appeal challenging the trial court's denial of their motion to quash, the Court of Civil Appeals dismissed their appeal, explaining that "[t]he order denying the motion to quash ... addressed only the disposition of that motion but did not direct the garnishee ... to disburse any funds to [the garnishers]. Thus, the ... order denying the motion to

quash is not a final judgment and is not capable of supporting this appeal." Id. See also Robbins v. State ex rel. Priddy, 109 So. 3d 1128, 1132 (Ala. Civ. App. 2012) (explaining that an order denying a motion to quash garnishment proceedings that does not otherwise adjudicate the rights of the parties is not a final judgment capable of supporting an appeal).

Like in Miller Construction, the trial court here denied a motion to quash garnishment proceedings, but it did not decide what should be done with the funds that were the subject of the garnishment. The garnishee Regions Bank has stated that it will hold the funds Lenn seeks to garnish "until the court orders release or payment," and it appears from the record before us that the trial court has yet to order either release or payment. Until such time as the trial court directs Regions Bank to take one of those actions, there is not a final judgment that will support an appeal. Miller Construction, ___ So. 3d at ___, Robbins, 109 So. 3d at 1132. Accordingly, this appeal must be dismissed.

Conclusion

The trial court's February 12 order directing the parties to comply with the terms of the settlement agreement was an interlocutory order that was injunctive in nature. That order was appealable under Rule 4(a)(1)(A), but any such appeal had to be filed within 14 days of the order's entry. Charles, Loggins, and the Family Trust filed their notice of appeal almost three months after the February 12 order was entered -- which means appeal no. 1190952 must be dismissed as untimely.

Conversely, the notice of appeal filed by Charles, Loggins, the Family Trust, and the Marital Trust in appeal no. 1190951 was filed too soon -- no final judgment has been entered in the garnishment proceedings. Because the trial court's order denying their motion to quash was not a final judgment, appeal no. 1190951 must be dismissed as premature.

1190951 -- APPEAL DISMISSED.

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

1190952 -- APPEAL DISMISSED.

Wise, Sellers, and Stewart, JJ., concur.

Mendheim, J., concurs specially.

Parker, C.J., and Bolin, Shaw, and Bryan, JJ., dissent.

MENDHEIM, Justice (concurring specially in appeal no. 1190952).

In appeal no. 1190952, it appears to me that the main opinion correctly applies the analysis in Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683 (Ala. 2009), pertaining to the settlement order, and no party has asked us to overrule Kappa Sigma.[5] However, I write specially to inquire about what it is the trial court would need to do in order to render its February 12, 2020, order a final judgment. The trial court specifically stated that the settlement is enforceable. The Kappa Sigma Court's only basis for determining after the fact that the settlement order in that case was an "injunction" was that the "order commanded [one settlement party] to take specific action -- to pay the settlement proceeds to [the other settlement party] by March 9, 2009." 40 So. 3d at 690. But if that is the only required characteristic of an injunction, then many trial-court orders could be considered "injunctions" after the fact

[5]In Bates v. Stewart, 99 So. 3d 837, 851 (Ala. 2012), this Court explained: "Because the trial court's order in Kappa Sigma commanded the parties to take specific action, this Court held that it had jurisdiction to consider the appeal, even though the order appealed from was not a final judgment." (Emphasis added.)

because trial courts routinely "order" parties to do or not do things, but we ordinarily do not view those orders as injunctions. As Justice Murdock observed in his special writing in Kappa Sigma, if "such an order is properly viewed as an injunction, the order could be procured only upon proof of the four elements necessary for such equitable relief." Kappa Sigma, 40 So. 3d at 696 (Murdock, J., concurring in the rationale in part and concurring in the result). Specifically, a permanent injunction requires four elements:

> " '[A] plaintiff must demonstrate [1] success on the merits, [2] a substantial threat of irreparable injury if the injunction is not granted, [3] that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and [4] that granting the injunction will not disserve the public interest.' "

Classroomdirect.com, LLC v. Draphix, LLC, 992 So. 2d 692, 702 (Ala. 2008) (quoting TFT, Inc. v. Warning Sys., Inc., 751 So. 2d 1238, 1242 (Ala. 1999)). But the reality is that in both Kappa Sigma and in this case the

elements of a permanent injunction were not satisfied; indeed, they were not even contemplated by the parties or by the trial court.[6]

In a case in which this Court carefully explained why an order a circuit court had entered based on an arbitration panel's decision was a final judgment, the Court stated that the order was

> "one that adjudicates the rights and responsibilities of the parties. Accordingly, it is enforceable as a final judgment. In essence, it is a final judgment that requires certain acts of both parties. As such, it contemplates further enforcement, and

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[6]I also note that the February 12, 2020, order, in stating that "the Mediation Settlement Agreement is due to be enforced" and ordering the parties "to perform each and every act and to execute any and all documents necessary or expedient to evidence and consummate the mediation settlement agreement as heretofore agreed by the parties," relied upon the terms of the settlement agreement without incorporating that document into the order. However, Rule 65(d)(2), Ala. R. Civ. P., requires that "[e]very order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained ...." (Emphasis added.) Cf. Supreme Fuels Trading FZE v. Sargeant, 689 F.3d 1244, 1247 (11th Cir. 2012) (Pryor, J., concurring) (reasoning that, because a district court "did not intend to issue an injunction when it entered the order enforcing the settlement agreement because the district court neither stated that it was issuing an injunction nor complied with Rule 65(d)," Fed. R. Civ. P., the "order enforcing the settlement agreement is not an order of specific performance that is appealable as an injunction ....").

perhaps interpretative acts, by the circuit court. This, however, does not make it a nonfinal judgment.[5]

"_____

"[5]'A final judgment is an order "that conclusively determines the issues before the court and ascertains and declares the rights of the parties involved." Bean v. Craig, 557 So. 2d 1249, 1253 (Ala. 1990).' Lunceford v. Monumental Life Ins. Co., 641 So. 2d 244, 246 (Ala. 1994). The determination whether a judgment is final does not depend on the title of the order; 'rather, the test of a judgment's finality is whether it sufficiently ascertains and declares the rights of the parties.' Ex parte DCH Reg'l Med. Ctr., 571 So. 2d 1162, 1164 (Ala. Civ. App. 1990) (emphasis added) (citing McCulloch v. Roberts, 290 Ala. 303, 276 So. 2d 425 (1973)). In McCulloch, the Court explained as follows:

> " 'In Ex parte Elyton Land Co., 104 Ala. 88, 91, 15 So. 939 (1893), this court held that:
>
> > " ' "... The test of the finality of a decree to support an appeal is not whether the cause remains in fieri, in some respects, in the court of chancery, awaiting further proceedings necessary to entitle the parties to the full measure of the rights it has been declared they have; but whether the decree which has been rendered, ascertains and declares these rights -- if these are ascertained and adjudged, the decree is final, and will support an appeal...." '

"290 Ala. at 305, 276 So. 2d at 426 (emphasis added)."

Southeast Constr., L.L.C. v. WAR Constr., Inc., 110 So. 3d 371, 376-77 (Ala. 2012) (first emphasis added). See also Helms v. Helms' Kennels, Inc., 646 So. 2d 1343, 1347 (Ala. 1994) (noting that "a trial court does have residual jurisdiction or authority to take certain actions necessary to enforce or interpret a final judgment").

It seems to me that the issue presented in Kappa Sigma and in appeal no. 1190952 is one of enforcement, not finality of a judgment, and I do not believe that an order that does nothing more than approve a settlement and require the parties to fulfill it should be viewed as an interlocutory order, much less an "injunction." Cf. Saber v. FinanceAmerica Credit Corp., 843 F.2d 697, 702 (3d Cir. 1988) (explaining that "[a] settlement agreement is a contract, and an order enforcing a contract is ordinarily described as an order for specific performance. 'Unlike an injunction, which can be employed procedurally to preserve rights pending the outcome of the substantive litigation, the remedy of specific performance is, generally speaking, dispositive of the substantive rights of the parties.' United Bonding Ins. Co. v. Stein, 410 F.2d 483, 486 (3d Cir. 1969). The fact that a specific date for compliance is attached to

an order for specific performance of the settlement agreement does not by itself transform the enforcement order into a mandatory injunction."); United States v. American Inst. of Real Estate Appraisers of Nat'l Ass'n of Realtors, 590 F.2d 242, 244 (7th Cir. 1978) (finding "no persuasive authority" for "treating an order approving a settlement as an injunction"). In sum, it seems to me that the main opinion correctly applies Kappa Sigma as binding precedent in this case, but I question the logic of the holding in that case.

PARKER, Chief Justice (dissenting in appeal no. 1190952).

I dissent from the main opinion as to appeal no. 1190952 and concur with Justice Shaw's special writing except as to note 7.

SHAW, Justice (dissenting in appeal no. 1190952).

I believe that appeal no. 1190952 was timely; therefore, I respectfully dissent to dismissing that appeal.

The 14-day period of Rule 4(a)(1)(A), Ala. R. App. P., for filing a notice of appeal, by its terms, applies to only interlocutory injunctions: "In appeals from the following orders or judgments, the notice of appeal shall be filed within 14 days (two weeks) of the date of the entry of the order or judgment appealed from: (A) any interlocutory order granting ... an injunction ...." (Emphasis added.) However, when an injunction is a final judgment and not interlocutory, the 42-day period provided in Rule 4(a)(1) instead applies. Jefferson Cnty. Comm'n v. ECO Pres. Servs., L.L.C., 788 So. 2d 121, 125-26 (Ala. 2000) ("[T]he 14-day limit prescribed by Rule 4(a)(1)(A), Ala. R. App. P., applies only to interlocutory orders granting an injunction .... [T]he injunction order is not an 'interlocutory order' and is appealable without regard to the provisions of Rule 4(a)(1)(A). We conclude that the 42-day limit, rather than the 14-day limit, applies ...."). See also Consolidated Elec. Contractors & Eng'rs, Inc. v. Center Stage/Country Crossing Project, LLC, 175 So. 3d 642, 649 (Ala. Civ. App.

2015) (holding that an order dissolving an injunction "was a final, appealable judgment" from which a party had 42 days to appeal).

The February 12, 2020, order at issue in appeal no. 1190952 resolved a challenge to a settlement agreement and enforced the agreement against the parties. Under the authority of Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683 (Ala. 2009), the order is in the nature of an injunction. The settlement agreement itself resolved all claims by all parties in the underlying action. Often, parties that settle an action will have the trial court enter the settlement agreement as a judgment, and it appears that the February 12, 2020, order, in substance, does so. Because there was nothing more for the trial court to do in this action to resolve the claims of the parties, the injunction was final, and the 42-day period of Rule 4(a)(1), and not the 14-day period of Rule 4(a)(1)(A), applies to the judgment. Bekken v. Greystone Residential Ass'n, 227 So. 3d 1201, 1213 (Ala. Civ. App. 2017) (holding that an injunction that "did not require further action by the trial court" was "a final judgment issuing a permanent injunction rather than ... an interlocutory order issuing a

preliminary injunction," and thus the 42-day period under Rule 4(a)(1) applied).

The Court in Kappa Sigma, supra, applied Rule 4(a)(1)(A) to the appeal in that case, but there was no precise holding on whether the injunction in that case was interlocutory because it was irrelevant: the Court's decision addressed whether an order enforcing a settlement was considered an injunction, and the appeal from it, filed within three days, was timely under either Rule 4(a)(1) or (a)(1)(A). In any event, Kappa Sigma did not hold that all injunction rulings, interlocutory or not, were controlled by Rule 4(a)(1)(A), which would have been contrary to the language of the rule.

This Court, on its own motion, must recognize the lack of appellate jurisdiction. McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017) ("[T]he absence of subject-matter jurisdiction cannot be waived, and it is the duty of an appellate court to notice the absence of subject-matter jurisdiction ex mero motu."). [7] The timely Rule 59(e), Ala. R. Civ. P., motion to alter,

[7]This Court's decision in Nettles v. Rumberger, Kirk & Caldwell, P.C., 276 So. 3d 663 (Ala. 2018), erroneously applied this rule to provide

amend, or vacate the February 12, 2020, order filed in this case suspended the time to file the notice of appeal. See Rule 4(a)(3), Ala. R. App. P. The notice was ultimately filed within 42 days of the trial court's timely denial of that motion; therefore, I believe that appeal no. 1190952 is timely, and I respectfully dissent to its dismissal.

Bolin and Bryan, JJ., concur.

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that this Court could, on its own motion, overrule unchallenged caselaw and hold that appellate jurisdiction existed. See Nettles, 276 So. 3d at 672-73 (Shaw, J., dissenting).