Rogers v. Cedar Bluff Volunteer Fire Dep't

Supreme Court of Alabama

June 30, 2023, Released

SC-2022-0439

Reporter
2023 Ala. LEXIS 77 *

Carol Rogers, as administratrix of the Estate of Susan Bonner, deceased v. Cedar Bluff Volunteer Fire Department and Cherokee County Association of Volunteer Fire Departments, Inc.

Notice: THIS OPINION IS SUBJECT TO FORMAL REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE SOUTHERN REPORTER.

Prior History: [*1] Appeal from Cherokee Circuit Court. (CV-19-900085).

Disposition: APPEAL DISMISSED.

Judges: COOK, Justice. Parker, C.J., and Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur. Shaw, J., concurs specially, with opinion. Sellers, J., dissents, with opinion.

Opinion by: COOK

Opinion

COOK, Justice.

Carol Rogers, the administratrix of the estate of Susan Bonner, deceased, commenced a wrongful-death action in the Cherokee Circuit Court against (1) the Cedar Bluff Volunteer Fire Department ("the CBVFD" or "Cedar Bluff")[1] ; (2) the Cherokee County Association of Volunteer Fire Departments, Inc. ("the Association"); and (3) Howard Guice, a former volunteer firefighter and emergency medical technician with the CBVFD. The trial court entered a summary judgment in favor of Cedar Bluff and the Association. Although the trial court certified its judgment as final pursuant to Rule 54(b), Ala. R. Civ. P., as explained below, that certification was improper, and this appeal is therefore due to be dismissed.

Facts and Procedural History

On June 6, 2017, Bonner was driving on County Road 45 in Cherokee County when her vehicle left the roadway and ended up submerged in a creek. After Bonner was rescued by a couple of passing motorists, a bystander who also happened to be [*2] a volunteer firefighter with the McCord's Crossroads Volunteer Fire Department ("the MCVFD") began performing cardiopulmonary resuscitation ("CPR") on Bonner. At some point, Cherokee County Emergency Medical Services ("Cherokee County EMS") was notified of the accident, and paramedics were dispatched to the scene.[2]

Guice heard the call about the accident on a radio issued to him by the CBVFD[3] and, because he was nearby, allegedly on a personal errand, decided to go to the scene to see if he could assist the paramedics even though he was not within the CBVFD's service area and the CBVFD had not dispatched him to the scene. After Guice arrived, the bystander who had been performing CPR on Bonner asked Guice to take over, but Guice declined. Instead, he advised that all resuscitative

[1] It is unclear from the record and the parties whether the CBVFD was properly named as a defendant in Rogers's action. Early in the litigation, the Town of Cedar Bluff (which is not expressly named as a defendant) maintained that, because the CBVFD was its volunteer fire department and was not a separate legal entity, it was the actual defendant. As a result, the Town of Cedar Bluff referred to itself in place of the CBVFD in some of the filings below (as did the trial court) and asserted various municipal-law defenses. However, nothing in the record indicates that the Town of Cedar Bluff ever took any formal steps in the trial court to substitute itself for the CBVFD or to otherwise correct the style of the case. Because we dismiss the appeal, it is not necessary for us to resolve this issue, and we will often use the designation "Cedar Bluff" to refer to this defendant in this opinion.

[2] Cherokee County EMS is not a defendant.

[3] That radio gave Guice access to radio frequencies reserved for use by emergency medical personnel and firefighters.

efforts should cease and stated over his CBVFD-issued radio that a death had occurred at the scene. Guice then allegedly entered the water to help other bystanders search for a possible second victim in Bonner's submerged vehicle.

Five minutes after the bystander ceased performing CPR on Bonner, Cherokee County EMS paramedics arrived at the scene. They examined Bonner and found that she was warm to the touch, [*3] had a pulse, and had responsive pupils. As a result, the paramedics performed CPR on her until she experienced a return of spontaneous circulation. She was transported to the hospital for further treatment but died two days later as a result of anoxic encephalopathy.[4]

After Rogers was appointed as the administratrix of Bonner's estate, she commenced the present wrongful-death action against Guice and numerous fictitiously named defendants alleging various theories of liability.[5] She later filed an amended complaint substituting Cedar Bluff and the Association for fictitiously named defendants.

Rogers then filed a second amended complaint in which she alleged a single wrongful-death claim against Cedar Bluff, the Association, and Guice. In that complaint, Rogers alleged that Guice's response to Bonner's accident had been deficient and that, because Guice had responded in his capacity as a volunteer firefighter, his actions or omissions were attributable to both Cedar Bluff and the Association. Therefore, Rogers argued, Cedar Bluff and the Association were vicariously liable for Guice's negligence and/or wantonness.

Following some discovery, Cedar Bluff and the Association each filed a summary-judgment [*4] motion.

In its motion, Cedar Bluff first argued that the CBVFD is a subordinate entity of the Town of Cedar Bluff and therefore a governmental entity. It further argued that Rogers could not prove the elements of her wrongful-death claim because, it asserted, "the simple and undisputed facts clearly establish that Guice did not respond to the accident scene in his capacity as a CBVFD firefighter but, rather, as a good samaritan," and, as a result, it asserted, it could not be vicariously liable for any of his acts or omissions while at the scene. Relying on this Court's prior decision in Hollis v. City of Brighton, 885 So. 2d 135 (Ala. 2004), Cedar Bluff also argued that it did not owe any duty to Bonner because this Court has refused to impose a duty upon a municipality that has established a volunteer fire department. Finally, Cedar Bluff argued that, even if it could be shown that Guice had been acting in his capacity as one of CBVFD's volunteer firefighters, Guice would be immune from liability under the Volunteer Service Act ("the VSA"), § 6-5-336, Ala. Code 1975,[6] which, it argued, meant that Cedar Bluff could not be held vicariously liable for his alleged conduct.

In its summary-judgment motion, the Association raised many of the same arguments that Cedar Bluff raised in its motion, including that, under the VSA, Guice would be immune from liability, which, it argued, meant that, like Cedar Bluff, it, too, could not be held vicariously liable for any of his alleged acts or omissions at the accident scene. Although Rogers alleged that, because Guice was one of the Association's volunteers, it could be held vicariously liable for his acts or omissions under § 6-5-336(e),[7] the Association argued that Rogers was mistaken because, it asserted, its function was limited to providing administrative support to local volunteer fire departments and it had no control over who from those departments responded to emergency calls or what actions they took when they did so. Accordingly, the

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[4] According to the record, anoxic encephalopathy occurs when blood ceases to flow to the brain.

[5] Rogers initially sued the MCVFD; however, the parties later moved to dismiss the MCVFD from her action, and the trial court granted that request.

[6] That subsection of the VSA addressing immunity provides:

> "(d) Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting [*5] in damage or injury if:
>
> > "(1) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for a nonprofit organization, a nonprofit corporation, [a] hospital, or a governmental entity; and
> >
> > "(2) The damage or injury was not caused by willful or wanton misconduct by such volunteer."

[7] Subsection (e) of the VSA provides:

> "(e) In any suit against a nonprofit organization, [a] nonprofit corporation, or a hospital for civil damages based upon the negligent act or omission of a volunteer, proof of such act or omission shall be sufficient to establish the responsibility of the organization therefor under the doctrine of 'respondeat superior,' notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (d)."

Association contended, it could not be liable for Guice's [*6] actions or omissions under a theory of respondeat superior pursuant to § 6-5-336(e) and, thus, was entitled to a summary judgment in its favor.

On December 14, 2021, the trial court entered a summary judgment in favor of Cedar Bluff and the Association. The trial court found that this Court's prior decision in Hollis, supra, controlled whether Cedar Bluff was entitled to summary judgment and explained:

> "[T]he Town of Cedar Bluff is immune from liability for the negligence of a volunteer firefighter under the Volunteer Service Act. As stated in Hollis,
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> > '"the firefighters, the putative servants in the case now before us, were volunteers who did not receive compensation for their service as volunteer firefighters. Consequently, they were immune from liability for negligence under the Volunteer Service [*7] Act. Because the firefighters were immune from liability for negligence under the Volunteer Service Act, no liability for negligence could befall them to be visited upon the City, the putative master in the case now before us. While the plaintiffs allege not only negligence but also wantonness by the firefighters, and while § 6-5-336 excepts wanton volunteers from the immunity, a city cannot be liable for wanton conduct.'
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> "[885 So. 2d] at 142.
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> "Assuming that Guice was acting in his capacity as a volunteer firefighter for CBVFD, then he would be immune from negligence as would [the Town]. If Guice acted wantonly, then [the Town] would not be liable for his wantonness. Accordingly, [the Town] is entitled to summary judgment."

As to the Association, the trial court acknowledged Rogers's argument that the Association could be liable under a theory of respondeat superior pursuant to § 6-5-336(e) (because it was not a "governmental entity" but instead was a "nonprofit" corporation) but concluded that the evidence presented by the Association in support of its summary-judgment motion demonstrated that vicarious liability could not be established. Specifically, relying on Donaldson v. Country Mutual Insurance Co., 291 So. 3d 1172 (Ala. 2019), in which this Court held that a company or organization cannot [*8] be held vicariously liable for the acts of an agent under the doctrine of respondeat superior unless the status of master and servant is established and the act was done within the scope of the servant's employment, the trial court found that the Association had presented substantial evidence indicating that Guice was not its servant and, thus, that it could not be held liable for any of Guice's alleged conduct pursuant to § 6-5-336(e).

Rogers filed a postjudgment motion, but that motion was denied. About a month later, the trial court entered an order certifying its judgment as final pursuant to Rule 54(b), Ala. R. Civ. P. Rogers now appeals.

Standard of Review

In Scrushy v. Tucker, 955 So. 2d 988 (Ala. 2006), this Court articulated the following standard of review applicable to an order entered pursuant to Rule 54(b):

> "Whether the action involves separate claims and whether there is a final decision as to at least one of the claims are questions of law to which we will apply a de novo standard of review. Whether there was 'no just reason for delay' is an inquiry committed to the sound discretion of the trial court, and, as to that issue, we must determine whether the trial court exceeded its discretion."

955 So. 2d at 996. See also Centennial Assocs. v. Guthrie, 20 So. 3d 1277, 1279 (Ala. 2009) (recognizing that a trial court's Rule 54(b) certification is subject to [*9] review by this Court to determine whether the trial court exceeded its discretion in concluding that there was "no just reason for delay").

Discussion

Rogers raises several arguments on appeal; however, we cannot consider the merits of her arguments because, as stated previously, the trial court's Rule 54(b) certification was improper and, thus, Rogers's appeal is due to be dismissed. Although none of the parties contested this Court's jurisdiction to decide this appeal or addressed the propriety of the trial court's certification of finality pursuant to Rule 54(b) in their briefs on appeal, it is well settled that this Court is "'duty bound to notice ex mero motu the absence of subject-matter jurisdiction.'" Baldwin Cnty. v. Bay Minette, 854 So. 2d 42, 45 (Ala. 2003) (quoting Stamps v. Jefferson Cnty. Bd. of Educ., 642 So. 2d 941, 945 n.2 (Ala. 1994)). See also Loachapoka Water Auth., Inc. v. Water Works Bd. of Auburn, 74 So. 3d 419, 422 (Ala. 2011) ("On questions of subject-matter jurisdiction, this Court is not limited by the parties' arguments or by the legal conclusions of the trial court regarding the existence of

jurisdiction."). Without subject-matter jurisdiction, this Court has no authority to consider the merits of an appeal. Loachapoka Water Auth., Inc., 74 So. 3d at 422.

As a general rule, a judgment is not final unless it resolves all claims against all parties. Cox v. Parrish, 292 So. 3d 312, 315 (Ala. 2019). Rule 54(b) provides an exception to that rule and states, in pertinent part:

> "When more than one claim [*10] for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

Nevertheless, as we stated in Cox, "[b]ecause this Court disfavors piecemeal appellate review, we have consistently cautioned trial courts that certifications under Rule 54(b) should be entered only in exceptional cases." 292 So. 3d at 315.

This Court has previously discussed factors to be taken into account when reviewing a judgment certified as final pursuant to Rule 54(b) to determine whether the trial court exceeded its discretion in finding that there was "no just reason for delay." For example, in some cases, we have considered whether "the issues in the claim being certified and a claim that will remain pending in the trial court '"are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results."'" Schlarb v. Lee, 955 So. 2d 418, 419-20 (Ala. 2006) (quoting Clarke-Mobile Counties Gas Dist. v. Prior Energy Corp., 834 So. 2d 88, 95 (Ala. 2002), quoting in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987)).

In other cases relevant to the present appeal, we have considered [*11] "whether the resolution of claims that remain pending in the trial court may moot claims presented on appeal." Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1264 (Ala. 2010) (emphasis added). For example, in Lighting Fair, a dispute arose among certain materialmen, the homeowners, a construction company, and a bank over a failure to pay for materials used in a home-construction project. The homeowners cross-claimed against the construction company and the bank. Relying on a provision in the construction contract, the trial court ordered the homeowners to arbitrate their claims against the construction company. While the arbitration proceeding was pending, the trial court entered a summary judgment in favor of the bank and the homeowners on the claims brought by the materialmen and in favor of the bank on the claims brought by the homeowners, and it certified that judgment as final pursuant to Rule 54(b). Both the materialmen and the homeowners appealed.

This Court concluded that the outcome of the pending arbitration proceeding below could cause some of the claims at issue on appeal to become moot. As a result, this Court held that the trial court had exceeded its discretion in certifying the judgment as final and dismissed both appeals.

Our Court has maintained [*12] this position in some of our more recent decisions. See, e.g., Cox, 292 So. 3d at 316 (holding that because the resolution of appellees' declaratory-judgment claim still pending in trial court could moot appellant's counterclaim, the trial court exceeded its discretion in certifying judgment dismissing that counterclaim as final pursuant to Rule 54(b)); and Richardson v. Chambless, 266 So. 3d 684 (Ala. 2018) (holding that the trial court's Rule 54(b) certification of a summary judgment in favor of the wife in a fraudulent-transfer action brought against both her and her husband was improper because future developments in the trial court's proceedings against the husband could render the plaintiff's claims against the wife moot, thus precluding this Court's need to review the summary judgment on appeal).

As stated previously, the trial court entered a summary judgment in favor of Cedar Bluff and the Association. Because their liability depends upon whether Guice is found liable when this case is tried, we must review the trial court's judgment to determine whether '"the need for review might or might not be mooted by future developments in the [trial] court."' Lighting Fair, 63 So. 3d at 1265 (quoting Allis-Chalmers Corp. v. Philadelphia Elec. Co., 521 F.2d 360, 364 (3d Cir. 1975), overruled on other grounds by Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 100 S. Ct. 1460, 64 L. Ed. 2d 1 (1980)).

In the present case, it is undisputed that the viability of Rogers's wrongful-death [*13] claim against either Cedar Bluff or the Association is entirely dependent on her still-pending claim against Guice. The bottom line is that if Guice is found not liable, then there would be no need for us to review the trial court's summary judgment in favor of Cedar Bluff or the Association in almost any scenario. For example, if a jury decides that Guice acted

reasonably, or breached no duty, or was not the proximate cause of Bonner's death, then this appeal would be mooted. Likewise, even if a jury finds none of those things, but finds that Guice "was acting in good faith and within the scope of [his] official functions and duties for a ... governmental entity," then pursuant to § 6-5-336(d)(1) of the VSA, Guice would be immune from liability and Cedar Bluff could not be held vicariously liable for his conduct.[8]

Because the review of the issues decided by the trial court on summary judgment would require this Court to resolve claims that are potentially moot, we conclude that the trial court exceeded its discretion in finding that there was no just reason for delay and certifying its judgment as final pursuant to Rule 54(b). Accordingly, Rogers's appeal is due to be dismissed as having been taken from a nonfinal judgment. [*14] Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004) ("A nonfinal judgment will not support an appeal.").[9]

Conclusion

Because the trial court's Rule 54(b) certification was improper, we dismiss the appeal.

APPEAL DISMISSED.

Parker, C.J., and Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Shaw, J., concurs specially, with opinion.

Sellers, J., dissents, with opinion.

Concur by: SHAW

[8] That is, assuming, without deciding, that Cedar Bluff is a governmental entity. Even if we were still faced with the question whether Cedar Bluff is a governmental entity, such a verdict for Guice would, under the VSA, narrow the questions before this Court. For instance, as of now, Rogers argues that Cedar Bluff has not established that Guice acted "in good faith" and that, therefore, Cedar Bluff is not entitled to immunity under the VSA. Thus, such a verdict would moot this question. Conversely, Cedar Bluff argues now (in the alternative) that Guice was not acting in the line and scope of a master-servant relationship with Cedar Bluff. Again, such a verdict would moot that question.

[9] Given our resolution of the foregoing issue, we need not address the other arguments made by the parties.

Concur

SHAW, Justice (concurring specially).

I concur in the main opinion. I write specially to note my concerns regarding this Court's doctrine providing that a Rule 54(b), Ala. R. Civ. P., certification allowing an immediate appeal of a nonfinal judgment is improper if the issues on appeal might be mooted by the subsequent litigation of the claims remaining in the trial court. See generally Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1262-64 (Ala. 2010) (discussing this doctrine). Rule 54(b) states, in pertinent part: "[T]he court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." (Emphasis added.) Even if the issues in an appeal of a judgment certified under Rule 54(b) might possibly be mooted at a later time, that does not always mean there is a "just reason for delay" for purposes of the rule. Instead, [*15] the determination of such an appeal may significantly aid in the determination of the claims remaining in the trial court, decrease subsequent litigation, or negate the need for future appeals, all of which could be "just reasons" for no delay. See also Foster v. Greer & Sons, Inc., 446 So. 2d 605, 609 (Ala. 1984) (stating that a "purpose behind Rule 54(b)" is to allow the trial court "to enter a final judgment immediately if, under the circumstances, to wait until the entire case is decided would create injustice").

This mootness exception to a Rule 54(b) certification appears to be consistently applied as a bright-line rule. See, e.g., Alabama Ins. Underwriting Ass'n v. Skinner, 352 So. 3d 688, 690 (Ala. 2021); Cox v. Parrish, 292 So. 3d 312, 315 (Ala. 2019) ("This Court has held that a trial court exceeds its discretion when it certifies a judgment as final pursuant to Rule 54(b) while claims remain pending before the trial court that, once decided, could render moot the necessity for appellate review of the claim on appeal."); and Richardson v. Chambless, 266 So. 3d 684, 690 (Ala. 2018). I thus concur to apply it here. However, in a future case, and in response to briefing by the parties, this Court may need to consider whether the application of this mootness doctrine necessarily comports with Rule 54(b).

Dissent by: SELLERS

Dissent

SELLERS, Justice (dissenting).

I respectfully dissent from the decision to dismiss this appeal. Further litigation implicating the Cherokee County [*16] Association of Volunteer Fire Departments, Inc., by virtue of a very tangential association with defendant Howard Guice is too remote a possibility to refuse to consider the merits of the appeal of the summary judgment in favor of that association that was certified as final pursuant to Rule 54(b), Ala. R. Civ. P. Moreover, appellee Cedar Bluff Volunteer Fire Department/Town of Cedar Bluff has put forth what I view as persuasive immunity-based defenses. And, although I appreciate the general idea of not deciding substantive issues in an appeal of a judgment certified under Rule 54(b) that could become moot based on resolution of the claims still pending in the trial court, immunity itself presents an important policy, namely, the prevention of exposing immune parties to ongoing litigation. "'One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.'" Ryan v. Hayes, 831 So. 2d 21, 31 (Ala. 2002) (quoting Siegert v. Gilley, 500 U.S. 226, 232, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991)). Accordingly, immunity issues should be resolved as early as possible. Ex parte Auburn Univ., 6 So. 3d 478, 484 (Ala. 2008). I would consider the merits of this appeal and would affirm the trial court's judgment.