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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0642

Hardy Automotive, LLC

v.

JPMorgan Chase Bank, N.A.

Appeal from Jefferson Circuit Court
(CV-22-900708)

COOK, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

SC-2023-0642

Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ.,
concur.

Parker, C.J., dissents, with opinion.

PARKER, Chief Justice (dissenting).

I respectfully dissent from the Court's affirmance of the Jefferson Circuit Court's judgment in favor of JPMorgan Chase Bank, N.A. ("JPMorgan"). I believe that JPMorgan's notice of appeal of the sale of a motor vehicle under § 32-13-4, Ala. Code 1975, was untimely filed and that the circuit court therefore lacked subject-matter jurisdiction over the appeal.

This case involves the sale of a motor vehicle under Alabama's Abandoned Motor Vehicle Act ("the AAMVA"), § 32-13-1 et seq., Ala. Code 1975. Under the AAMVA, a motor vehicle that has been unclaimed for more than 30 days after notice is sent to the owner of record is considered an "abandoned motor vehicle." § 32-13-1(1). A person in possession of an abandoned motor vehicle may sell it at a public auction (§ 32-13-3(a)), so long as notice is given to the owners and lienholders of record and published in accordance with the requirements of § 32-13-3(b). An owner or lienholder of record may contest the sale by filing a "notice of appeal" in the circuit court for the county where the sale is scheduled to occur. § 32-13-4(a). The circuit court will hear the case and determine whether the vehicle was abandoned and whether proper notice was provided to

owners and lienholders of record if the notice of appeal was "timely made." § 32-13-4(b)(2). It is this last provision on which I think the outcome of this case properly depends.

I. Facts and Procedural History

Tomika Jackson purchased a truck in 2020, using funds from a loan she obtained from JPMorgan. In October 2021, Jackson took the vehicle to a garage operated by Hardy Automotive, LLC ("Hardy"), to have it repaired after an accident. Hardy made repairs to the vehicle, which were allegedly worth \$23,334.96. Jackson failed to pay or to pick up her vehicle. Hardy began proceedings to effect a judicial sale of the vehicle under the AAMVA. Hardy sent an "unclaimed vehicle" letter to JPMorgan, a secured creditor of record, stating that the vehicle had been reported as "unclaimed" as defined in § 32-8-84, Ala. Code 1975. Around the same time, JPMorgan also received notice from the Alabama Department of Revenue ("ADOR") as required by § 32-13-3(a)(3), dated February 3, 2022. That notice informed JPMorgan that, after the sale of the unclaimed vehicle, JPMorgan would lose its security interest in the vehicle. The notice explained that JPMorgan could "redeem" the vehicle by contacting Hardy. If JPMorgan failed to do so, the notice explained,

the vehicle would be sold at auction on March 14, 2022.

JPMorgan contacted Hardy and learned of the circumstances surrounding the repairs. JPMorgan asked Hardy for a copy of the repair invoice and any photographs Hardy had of the vehicle. Hardy sent both, but the photographs only showed the vehicle after the repairs. JPMorgan thus questioned whether the repairs were necessary and refused to pay the amount claimed by Hardy in order to "redeem" the vehicle.

On March 10, 2022, 35 days after the date of the notice from ADOR, JPMorgan filed a "Notice of Appeal of the Sale of a Motor Vehicle" in the Jefferson Circuit Court in accordance with § 32-13-4(a). It named Jackson, Hardy, and ADOR as defendants. JPMorgan requested, among other things, (1) an injunction halting the sale of the vehicle and (2) an order declaring that it is entitled to immediate possession of the vehicle.

Hardy moved to dismiss, arguing, among other things, that the circuit court lacked subject-matter jurisdiction and that JPMorgan's claims were barred under § 32-13-4. After JPMorgan responded, the circuit court held a hearing on the motion to dismiss. The circuit court entered an order denying Hardy's motion and finding that JPMorgan was entitled to immediate possession of the vehicle. Hardy filed a motion for

relief from the order, which the circuit court denied. Hardy then filed an answer to JPMorgan's notice, in which it denied JPMorgan's allegations and raised several affirmative defenses. Hardy also filed counterclaims against JPMorgan and cross-claims against Jackson. Hardy requested, among other things, a judgment against JPMorgan and Jackson in the amount of \$24,334.96 and Hardy's court costs.

JPMorgan filed a motion to dismiss Hardy's counterclaims. Hardy did not respond to JPMorgan's motion. The circuit court granted JPMorgan's motion, dismissed Hardy's counterclaims and cross-claims, and ordered the clerk to issue the writ for possession of the vehicle to JPMorgan. Hardy appealed to this Court.

II. Subject-Matter Jurisdiction

A court's subject-matter jurisdiction is derived from the Alabama Constitution and the Alabama Code. Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006). "Appellate courts are "'duty bound to notice ex mero motu the absence of subject-matter jurisdiction.'" Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 36-37 (Ala. 2013) (citations omitted).

A. Interpretation of the AAMVA

Hardy argued below and on appeal that JPMorgan's appeal to the

circuit court should have been "dismissed outright" because, he asserts, JPMorgan's notice of appeal was "untimely filed." Hardy relies primarily on § 32-13-4(a); Hardy purports to quote that provision as follows in its brief:

"(a) The current owners, registrants, secured parties, and lienholders of record, if any, of a motor vehicle, prior to the sale, may contest the sale of the motor vehicle pursuant to this chapter [i.e., the AAMVA] by filing a notice of appeal with the Alabama Tax Tribunal pursuant to subsection (a) of Section 40-2A-8, [Ala. Code 1975,] or in the circuit court in the county where the sale is scheduled to occur."

Hardy's brief at 9 (emphasis omitted). That quoted provision incorporates by reference the timing terms of § 40-2A-8, Ala. Code 1975. That section requires that "[s]uch notice of appeal must be filed within 30 days of the date notice of such act or refusal to act is mailed to the taxpayer, and such appeal, if timely filed, shall proceed as herein provided for appeals to the Alabama Tax Tribunal." § 40-2A-8(a) (emphasis added). It is undisputed that JPMorgan's notice of appeal under § 32-13-4 was filed 35 days after the date of the notice from ADOR. Hardy argues, therefore, that the notice of appeal was not "timely filed." Thus, Hardy argues, the circuit court should have dismissed JPMorgan's appeal, as required by § 32-13-4(b)(1), rather than deciding it under § 32-13-4(b)(2).

The problem with this argument is that Hardy quotes and relies upon an outdated version of § 32-13-4(a). Section 32-13-4 was amended in 2017, before the underlying events took place. As amended, § 32-13-4(a) now reads:

"(a) The current owners, registrants, secured parties, and lienholders of record, if any, of a motor vehicle, prior to the sale, may contest the sale of the motor vehicle pursuant to this chapter by filing a notice of appeal with the circuit court in the county where the sale is scheduled to occur."

Notably absent from the new version is any reference to § 40-2A-8. This is material because § 40-2A-8 formerly supplied the meaning for § 32-13-4(b)'s requirement that notices of appeal be "timely made." The new version of § 32-13-4 retains the language requiring a notice of appeal to be "timely made" but does not define what "timely made" means.

Without any indication in the statute itself as to what "timely made" means, we are left with three choices: (1) treat the "timely made" language as superfluous, (2) impose our own meaning on the phrase "timely made," or (3) look for applicable default timing provisions from other sections of the Alabama Code or Rules of Court. ""There is a presumption that every word, sentence, or provision [of a statute] was intended for some useful purpose, has some force and effect, and that

some effect is to be given to each, and also that no superfluous words or provisions were used.'" Ex parte Uniroyal Tire Co., 779 So. 2d 227, 236 (Ala. 2000) (quoting Sheffield v. State, 708 So. 2d 899, 909 (Ala. Crim. App. 1997)). This presumption eliminates the option of treating the words "timely made" as superfluous.

The phrase "timely made" simply cannot be ignored. It must mean something. But we cannot simply make up and apply our own definition for this phrase to hold that JPMorgan's notice of appeal was "timely made." It is well established that "[t]o supply omissions transcends the judicial function.'" Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 94 (Thomson/West 2012) (quoting Iselin v. United States, 270 U.S. 245, 251 (1926)). We know that "timely made" must mean something; but we cannot create a meaning for it out of whole cloth. We are therefore left with the third option and so must turn to the general provisions of the Alabama Administrative Procedure Act ("the AAPA"), § 41-22-1 et seq., Ala. Code 1975.

B. Applicability of the AAPA

The general provisions and requirements of the AAPA apply broadly to any agency action unless the agency action is expressly

exempted from their provisions:

"(a) This chapter [i.e., the AAPA] shall be construed broadly to effectuate its purposes. Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on the date of the passage of this chapter or thereafter enacted. If any other statute in existence on the date of the passage of this chapter or thereafter enacted diminishes any right conferred upon a person by this chapter or diminishes any requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

"(b) Except as to proceedings in process on October 1, 1982, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name."

§ 41-22-25, Ala. Code 1975 (emphasis added). This Court has confirmed the primacy of the AAPA as to matters of administrative procedure. Ex parte GASP, 285 So. 3d 228, 233 (Ala. 2019) (holding that the AAPA applies unless expressly exempted). The Commentary to § 41-22-25 explains:

"[T]he burden should be on those seeking an exemption from the general principles embodied in the [Act] to demonstrate clearly the necessity for an exemption, and to have their claim for any such exception embodied in unmistakable statutory language indicating that the Legislature has actually

considered the question of an exemption and determined that it is warranted.'"

(Quoting Arthur E. Bonfield, The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process, 60 Iowa L. Rev. 731, 756 (1975).)¹ Therefore, when a statute directs an agency of the State of Alabama to take an action, that action is subject to the AAPA unless expressly exempted.

ADOR is an "agency" as that term is defined by § 41-22-3(1). Because § 32-13-4 deals with the sale of motor vehicles and requires ADOR to give notice to affected parties, it requires action by ADOR. Therefore, under § 44-22-25(a), the AAPA applies unless § 32-13-4 "expressly provide[s] otherwise." And § 32-13-4 does not "expressly provide[] otherwise."

The AAPA provides procedures for judicial review of agency actions. Section 41-22-20 provides, in relevant part:

"(a) A person who has exhausted all administrative remedies available within the agency, other than rehearing, and who is aggrieved by a final decision in a contested case is

¹The authors of the Commentary to § 41-22-25 likely looked to this article because of the significant similarities, including similar language, between § 41-22-25 and the analogous provision in the Iowa Administrative Procedure Act. Compare Iowa Code § 17A.23(1)-(2) with § 41-22-25.

entitled to judicial review under this chapter. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

(Emphasis added.)²

This case involves the sale of a motor vehicle. Title to a motor vehicle is ordinarily transferred through an agency action taken by ADOR. See generally the Alabama Uniform Certificate of Title and Antitheft Act, § 32-8-1 et seq., Ala. Code 1975. In order to effect the sale

²"Contested case" is defined by § 41-22-3(3):

"(3) Contested Case. A proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing. The term does not include intra-agency personnel actions; and does not include those hearings or proceedings in which the Alabama Board of Pardons and Paroles considers the granting or denial of pardons, paroles, restoration of civil and political rights, or remission of fines and forfeitures."

There may be debate over whether this case is a "contested case" under the AAPA, but, either way, the AAPA's provisions for judicial review are applicable here. Most likely, this case is not a "contested case" within the meaning of § 41-22-3(3). See Scott v. State Pilotage Comm'n, 699 So. 2d 196, 199 (Ala. Civ. App. 1997). ADOR is not required to hold a hearing before titling a vehicle after a judicial sale under the AAMVA. But JPMorgan's notice of appeal is still within the purview of § 41-22-20(a), because it has appealed a preliminary procedural action of ADOR in a situation in which review of ADOR's final action would not provide an adequate remedy.

of a motor vehicle under § 32-13-3, ADOR must cooperate with the seller and must send notice to potentially affected parties. § 32-13-3(b)(3). This is because ADOR is the agency that issues all certificates of title. § 32-8-47, Ala. Code 1975. The issuance of a certificate of title is a final agency action evidencing the transfer of title between parties. Id. The sending of a notice of an impending sale by ADOR is an "action" by that agency. See Black's Law Dictionary 37 (11th ed. 2019) (defining "action" as "1. The process of doing something; conduct or behavior. ... 2. A thing done; ACT 3. *Patents*. OFFICE ACTION. ... 4. A civil or criminal judicial proceeding." (emphasis added)). Because that action is before the sale, it qualifies as a preliminary action. See Black's Law Dictionary 1428-29 (defining "preliminary" as "[c]oming before and usu. leading up to the main part of something happening before something that is more important, often in preparation for it <preliminary negotiations>").

Because the AAPA applies "in addition to" the requirements of any statute involving action by any agency, § 41-22-25(a), the timing provision of § 41-22-20(d) applies to appeals, under § 32-13-4(a), of the action required of ADOR in § 32-13-3(b)(3). Under the second sentence of § 40-22-20(a), the "preliminary ... agency action" of sending notice is

immediately reviewable, because review of the "final agency decision" (issuance of a certificate of title to the purchaser) would not provide an adequate remedy.³ This is why the proper action to contest the sale is a "notice of appeal" (an appeal of what, exactly, if not the preliminary agency action?), and why the AAPA applies.

Section 41-22-20(d) provides that the notice of appeal to obtain judicial review of a qualified preliminary agency action in the circuit court must be filed within 30 days of the date of the agency action. Failure to comply with this time limit implicates the circuit court's subject-matter jurisdiction. See Ex parte Alabama Medicaid Agency, 298 So. 3d 522, 525 (Ala. Civ. App. 2020) (holding that the timely filing of a notice of appeal to a circuit court under § 41-22-20(d) was jurisdictional, citing Noland Health Servs., Inc. v. State Health Planning & Dev. Agency, 44 So. 3d 1074, 1080 (Ala. 2010)). Because § 41-22-20(d) supplies the meaning of the undefined phrase "timely made" in § 32-13-4(b), JPMorgan was required to file its notice of appeal within 30 days of the

³The sale of the vehicle to a bona fide purchaser for value would estop JPMorgan from taking any action to deny Hardy's right to sell the vehicle. Brown v. Sand Mountain Bank, 271 Ala. 668, 670, 127 So. 2d 614, 615 (1961).

date of the notice from ADOR required by § 32-13-3(b)(3). Its failure to do so deprived the circuit court of subject-matter jurisdiction. Therefore, instead of affirming the circuit court's judgment in favor of JPMorgan, this Court should reverse that judgment and remand the case to the circuit court, with instructions to dismiss the case for lack of subject-matter jurisdiction.

III. Conclusion

This decision illustrates the effect of statutory gaps on this Court's jurisprudence. The Legislature undeniably left a gap in § 32-13-4(a) when it removed the provision that defined "timely made" by reference without replacing it. I believe that this legislative action, combined with the provisions of § 41-22-25 holding that the AAPA is applicable unless expressly exempted, leaves us only with § 41-22-20(d) to define "timely made." The Court appears to disagree, though without specifying why. I call on the Legislature to fill this gap.

For the foregoing reasons, and with the foregoing observations, I respectfully dissent.