

IN THE SUPREME COURT OF ALABAMA
January 15, 2010

1090444

David Barber v. Houston Economic Development Association et al. (Appeal from Houston Circuit Court: CV-09-379, CV-10-003).

ORDER

The temporary restraining order made the basis of the appeal having been suspended and not vacated, the appeal is not moot.

The trial court lacks subject-matter jurisdiction to interfere with a criminal proceeding by civil action. Higdon v. McDuff, 233 Ala. 497, 172 So. 636, 637 (1937). Where the court lacks subject-matter jurisdiction the order appealed from is void; consequently, we vacate the order, dismiss the action and dismiss this appeal. The Court, having no jurisdiction, does not address the issue of tolling asserted by Barber.

Cobb, C.J., and Lyons, Woodall, Smith, Bolin, Parker, and Shaw, JJ., concur.

Stuart and Murdock, JJ., concur in part and dissent in part.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 15th day of January, 2010.

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

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STUART, Justice (concurring in part and dissenting in part).

I concur that the trial court lacks subject-matter jurisdiction to interfere in a criminal proceeding by the civil action of issuing a temporary restraining order. Consequently, the trial court's order in this case is void. State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999) (holding that action taken by a trial court lacking subject-matter jurisdiction is void). I therefore concur that the temporary restraining order is due to be vacated and the appeal dismissed. The vacation of an invalid order or orders presumes that the parties will be placed in the same position they held before the entry of the invalid order. Therefore, I would address the issue whether the time for executing the search warrant was tolled by the issuance of the temporary restraining order, after the parties have had the opportunity to brief the issue.

Murdock, J., concurs.

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MURDOCK, Justice (concurring in part and dissenting in part).

I join Justice Stuart's special writing. I do not agree that this Court, especially given its equitable and general supervisory authority, lacks the authority to address the effect on a prior court order (the search warrant) of our vacature of a subsequent court order (the temporary restraining order) that purported to render the prior order ineffective. Therefore, I would stay the temporary restraining order and provide both parties an opportunity to brief the effect of a vacature of the temporary restraining order on the viability of the prior court order, i.e., the search warrant.