

Rel: June 21, 2019

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Ex parte Randy Farley

PETITION FOR WRIT OF MANDAMUS

(In re: Randy Farley

v.

Transport America, Inc.)

(Etowah Circuit Court, CV-18-900604)

PER CURIAM.

On August 15, 2018, Randy Farley filed in the Etowah Circuit Court ("the trial court") a complaint against his

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employer, Transport America, Inc. ("Transport America"), seeking an award of workers' compensation benefits. Among other things, Farley alleged that he had suffered a permanent vocational impairment as a result of an on-the-job injury. Transport America answered and denied liability.

During the pendency of discovery in the action, Transport America asked Farley to execute releases in order for it to obtain Farley's Social Security disability records, Social Security earnings records, Alabama Department of Internal Revenue records, and Alabama Department of Labor records regarding workers' compensation and unemployment benefits. Farley opposed that request, arguing that no provision of the Alabama Rules of Civil Procedure required the execution of those releases. Transport America filed in the trial court a motion requesting an order compelling Farley's execution of the releases. Farley opposed that motion to compel.

On February 26, 2019, the trial court entered an order stating that, "[i]f [Farley] is alleging a non-scheduled injury and/or a vocational loss, then he is to sign said releases for [Transport America]. However, if [Farley] is alleging a scheduled injury, then [Farley] is not required to

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sign said releases." It appears to be undisputed that Farley has alleged an injury that is not scheduled under the Workers' Compensation Act and vocational loss. On March 1, 2019, Farley filed a "motion to reconsider" the February 26, 2019, order. On March 12, 2019, the trial court entered an order denying the motion to reconsider. On March 25, 2019, within 42 days of the entry of the February 26, 2019, order, Farley timely filed a petition for a writ of mandamus in this court from the February 26, 2019, order. See Rule 21(a)(3), Ala. R. App. P. ("The petition shall be filed within a reasonable time. The presumptively reasonable time for filing a petition seeking review of an order of a trial court or of a lower appellate court shall be the same as the time for taking an appeal."); Rule 4(a)(1), Ala. R. App. P. (providing that an appeal must be filed within 42 days of the entry of the order or judgment from which the appeal is taken).¹

¹We note that the March 1, 2019, "motion to reconsider" was not a Rule 59(e), Ala. R. Civ. P., postjudgment motion. Such a motion may be filed only in reference to a final judgment. SCI Alabama Funeral Servs., Inc. v. Hester, 984 So. 2d 1207, 1208 n. 1 (Ala. Civ. App. 2007). The March 1, 2019, motion did not extend the presumptively reasonable time in which Farley could file the petition for a writ of mandamus. Ex parte Madison Cty. Dep't of Human Res., 261 So. 3d 381, 384 (Ala. Civ. App. 2017) (citing Ex parte Onyx Waste Servs. of Florida, 979 So. 2d 833, 834 (Ala. Civ. App. 2007)).

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In his brief filed in support of his petition for a writ of mandamus, Farley argues that neither the Alabama Rules of Civil Procedure nor other Alabama law permits a trial court to enter an order compelling a party to execute a release of documents to the opposing party; he contends that requiring him to execute the releases would result in an overly broad release of information. In its response to the petition, Transport America alleges that Farley did not seek a protection order to narrow the scope of any information obtained under executed releases. Transport America also argues that this matter is not appropriate for review by way of a petition for a writ of mandamus under the authority of Ex parte Ocwen Federal Bank, FSB, 872 So. 2d 810 (Ala. 2003). In that case, our supreme court stated:

"Mandamus is an extraordinary remedy and will be granted only where there is '(1) a clear legal right in the petitioner 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) properly invoked jurisdiction of the court.' Ex parte Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991). This Court will not issue the writ of mandamus where the petitioner has '"full and adequate relief"' by appeal. State v. Cobb, 288 Ala. 675, 678, 264 So. 2d 523, 526

Regardless, the petition for a writ of mandamus was timely filed from the February 26, 2019, order.

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(1972) (quoting State v. Williams, 69 Ala. 311, 316 (1881)).

"Discovery matters are within the trial court's sound discretion, and this Court will not reverse a trial court's ruling on a discovery issue unless the trial court has clearly exceeded its discretion. Home Ins. Co. v. Rice, 585 So. 2d 859, 862 (Ala. 1991). Accordingly, mandamus will issue to reverse a trial court's ruling on a discovery issue only (1) where there is a showing that the trial court clearly exceeded its discretion, and (2) where the aggrieved party does not have an adequate remedy by ordinary appeal. The petitioner has an affirmative burden to prove the existence of each of these conditions."

872 So. 2d at 813 (emphasis added).

The court in Ocwen then noted that, generally, an appeal provides an adequate remedy for challenging a discovery order and, therefore, that filing a mandamus petition is not an appropriate method for challenging a trial court's discovery rulings; the court noted the expense to the judiciary associated with review of interlocutory discovery orders and the interruption of litigation as reasons for not reviewing all petitions for a writ of mandamus pertaining to discovery orders. Ocwen, 872 So. 2d at 813. In Ocwen, our supreme court held that Alabama's appellate courts would no longer review a discovery order by way of a petition for a writ of mandamus, except

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"(a) when a privilege is disregarded ...; (b) when a discovery order compels the production of patently irrelevant or duplicative documents, such as to clearly constitute harassment or impose a burden on the producing party far out of proportion to any benefit that may obtain to the requesting party ...; (c) when the trial court either imposes sanctions effectively precluding a decision on the merits or denies discovery going to a party's entire action or defense so that, in either event, the outcome has been all but determined, and the petitioner would be merely going through the motions of a trial to obtain an appeal; or (d) when the trial court impermissibly prevents the petitioner from making a record on the discovery issue so that the appellate court cannot review the effect of the trial court's alleged error."

872 So. 2d at 813-14.

In this case, this court granted a motion filed by Farley to allow him to submit a reply brief in response to Transport America's answer to his petition for a writ of mandamus. In that reply brief, Farley argues that Transport America has mischaracterized his petition for a writ of mandamus as challenging a discovery order. Farley contends that Ocwen and similar authority do not preclude review of this matter by a petition for a writ of mandamus because, he says, his argument is that the February 26, 2019, order is not a permissible discovery order and that the method for obtaining information pursuant to that order is outside the methods of discovery

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that are listed in Rule 26(a), Ala. R. Civ. P. However, another portion of Rule 26 provides, in part:

"Parties may obtain discovery regarding any matter, not privileged, which is: (I) relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party; and (ii) proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Rule 26(b)(1). In its February 26, 2019, order, the trial court clearly determined that the signed releases would allow Transport America to obtain discoverable information that is relevant to the parties' dispute.² For the purposes of resolving this petition for a writ of mandamus, therefore, we reject Farley's argument and conclude that the February 26, 2019, order comes within the purview of Ocwen, supra, and the

²Farley makes no argument that the trial court's determination is "not proportional to the needs of the case," Rule 26(b)(1); therefore, we do not address that issue.

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limitations that case imposes on review by way of a petition for a writ of mandamus.

The burden is on the petitioning party to demonstrate the existence of facts warranting the review, by way of a petition for a writ of mandamus, of an order such as the February 26, 2019, order that allows discovery of information relevant to the parties' claims and defenses. Ocwen, 872 So. 3d at 814; see also Ex parte Dillard Dep't Stores, Inc., 879 So. 2d 1134, 1137 (Ala. 2003) ("The burden rests on the petitioner to demonstrate that its petition presents such an exceptional case--that is, one in which an appeal is not an adequate remedy."). In his briefs submitted to this court, Farley argues that the trial court abused its discretion in ordering him to execute the releases because, he contends, the releases would produce the discovery of broad and irrelevant information. With regard to whether he would have an adequate remedy on appeal, Farley maintains simply that he would have no adequate remedy on appeal because, once the releases are executed, Transport America will have access to the information it requested, which, he asserts, is overly broad. However, the simple fact that a ruling is adverse to a party

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and results in the production of discovery against that party's wishes does not render the ruling incapable of remedy on appeal. The ruling could be challenged and lead to a reversal on appeal.

Further, in seeking relief pursuant to his petition for a writ of mandamus, Farley has not addressed any of the exceptions set forth in Ocwen, 872 So. 2d at 813-14, for allowing review of the February 26, 2019, order by way of his a petition for a writ of mandamus. It is not the responsibility of this court to create or support a legal argument for a petitioner. See Ex parte Guaranty Pest Control, Inc., 21 So. 3d 1222, 1228 (Ala. 2009) (quoting Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)) ("[I]t is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument."); and Hamilton ex rel. Slate-Hamilton v. Connally, 959 So. 2d 640, 643 n. 3 (Ala. 2006) (same). Thus, Farley has not demonstrated that this dispute is so exceptional as to necessitate review by way of

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a petition for a writ of mandamus. Ocwen, supra; Ex parte Meadowbrook Ins. Grp., Inc., 987 So. 2d 540, 551 (Ala. 2007).

Out of an abundance of caution, we note that the only issue pertinent to the Ocwen exceptions that is mentioned in Farley's brief submitted to this court is an argument that information that might be privileged "could" be contained in the documents released to Transport America when he executes the releases. However, Farley fails to identify any privilege he maintains could be implicated. Also, he does not contend that a protective order would not be adequate to protect the disclosure of any privileged information.

Regardless, nothing in the materials Farley submitted to this court in support of his petition for a writ of mandamus indicates that Farley raised before the trial court the issue of a possible infringement of a privilege.

"This Court will not reverse an order duly entered by a trial court, or issue a writ of mandamus commanding a trial judge to rescind an order, based upon a ground asserted in the petition for the writ of mandamus that was not asserted to the trial judge, regardless of the merits of a petitioner's position in the underlying controversy."

State v. Reynolds, 887 So. 2d 848, 851-52 (Ala. 2004).

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Given the procedural posture of this case and the arguments made before the trial court and before this court, we cannot say that Farley has demonstrated a clear legal right to the relief he requests in his petition for a writ of mandamus. We therefore deny the petition.³

PETITION DENIED.

Thompson, P.J., and Donaldson and Hanson, JJ., concur.

Moore and Edwards, JJ., concur in the result, without writings.

³We make no determination regarding the propriety of the trial court's February 26, 2019, order or regarding the merits of Farley's arguments pertaining to that order.