Rel: September 20, 2019

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180920

Ex parte Michele Cherie Culverhouse

PETITION FOR WRIT OF MANDAMUS

(In re: Corey Lee Culverhouse

v.

Michele Cherie Culverhouse)

(Geneva Circuit Court, DR-19-900077)

THOMPSON, Presiding Judge.

Michele Cherie Culverhouse ("the wife") has petitioned this court for a writ of mandamus directing the Geneva Circuit

Court ("the trial court") to vacate a portion of its August 6, 2019, order requiring that she equally share the costs to mediate a divorce action filed by Corey Lee Culverhouse ("the husband"). For the following reasons, we grant the petition and issue the writ.

The materials submitted to this court indicate that on August 6, 2019, the husband moved the trial court to set a final hearing in the divorce action or, in the alternative, "to set mediation." That same day, the trial court granted that motion; the trial court ordered the husband and the wife to mediate and specified that the husband and the wife equally share the costs of the mediation.

On that same date, the wife filed a motion asking the trial court to amend its August 6, 2019, order to remove that portion of the order that required her to share in the costs of the mediation. In her motion, the wife argued that she had not agreed to mediation and that, because he had moved for mediation, the husband was required to pay the costs of the mediation. In her August 6, 2019, motion, the wife cited § 6-6-20(b), Ala. Code 1975, and Mackey v. Mackey, 799 So. 2d 203 (Ala. Civ. App. 2001). The trial court denied the wife's

motion on August 7, 2019.[1] On August 8, 2019, the wife filed another motion asking to be relieved from the requirement that she share in paying the costs of the mediation. The trial court entered an order on August 9, 2019, in which it denied that motion. The wife filed a timely petition for a writ of mandamus on August 16, 2019.

The wife argues that the trial court erred in its interpretation and application of § 6-6-20(b)(2), Ala. Code 1975. Section 6-6-20 provides, in pertinent part:

> "(a) For purposes of this section, 'mediation' means a process in which a neutral third party assists the parties to a civil action in reaching their own settlement but does not have the authority to force the parties to accept a binding decision.
>
> "(b) Mediation is mandatory for all parties in the following instances:
>
> "(1) At any time where all parties agree.
>
> "(2) Upon motion by any party. The party asking for mediation shall pay the costs of mediation, except attorney fees, unless otherwise agreed.
>
> "(3) In the event no party requests mediation, the trial court may, on its own

[1]We note that, on August 6, 2019, the wife also filed an "amended motion to amend" and that, on August 7, 2019, the trial court also entered a separate order that denied that motion.

> motion, order mediation. The trial court may allocate the costs of mediation, except attorney fees, among the parties."

(Emphasis added.)

Thus, if a party requests mediation, the trial court must grant that request and order the parties to mediate their dispute. § 6-6-20(b). Our supreme court has explained:

> "'Although a trial court has discretion as to whether to stay the proceedings during the mediation, the trial court has to order mediation upon request of a party.' Ex parte Morgan County Comm'n, 6 So. 3d 1145, 1147 (Ala. 2008) (noting that the trial court had no discretion to deny the motion of a party requesting mediation (emphasis added)). '"Section 6-6-20, Ala. Code 1975, allows one party to require a court to order mediation of a dispute, irrespective of the position of any other party to the dispute."' 6 So. 3d at 1147 (quoting Alabama Civil Court Mediation Rules, Comment to Amendment to Rule 2, Effective June 26, 2002 (emphasis added)). See also Mackey v. Mackey, 799 So. 2d 203, 207 (Ala. Civ. App. 2001) (mediation is mandatory when requested by a party)."

Working v. Jefferson Cty. Election Comm'n, 72 So. 3d 18, 21 (Ala. 2011). See also Mackey v. Mackey, 799 So. 2d at 206-07 (same).

The wife argues that the second part of § 6-6-20(b)(2), i.e., the part that specifies that if only one party moves for mediation, that party must bear the costs of the mediation, is also mandatory. The wife contends that, in requiring her to

pay a portion of the costs of the mediation, the trial court misapplied § 6-6-20(b)(2).

> "The construction of a statute is a legal question, and we review the trial court's interpretation of a statute with no presumption of correctness. Ex parte Sonat, Inc., 752 So. 2d 1211, 1216 (Ala. 1999) (citing Sizemore v. Franco Distrib. Co., 594 So. 2d 143, 147 (Ala. Civ. App. 1991) (rejecting a presumption of correctness in tax-refund action brought as original proceeding in circuit court)). The cardinal rule in statutory construction is to determine and give effect to the intent of the legislature as manifested in the language of the statute. State v. Amerada Hess Corp., 788 So. 2d 179 (Ala. Civ. App. 2000) (citing McClain v. Birmingham Coca-Cola Bottling Co., 578 So. 2d 1299 (Ala. 1991)). 'Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive. Words must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret the language to mean exactly what it says.' Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996) (citing IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344 (Ala. 1992))."

State v. Pettaway, 794 So. 2d 1153, 1155 (Ala. Civ. App. 2001). Further, "'[t]he word "shall" is to be afforded a mandatory connotation when it appears in a statute.' State Pers. Bd. v. Prestwood, 702 So. 2d 176, 179 (Ala. Civ. App. 1997)." Bergob v. Scrushy, 855 So. 2d 523, 531-32 (Ala. Civ. App. 2002); see also Ex parte Prudential Ins. Co. of America, 721 So. 2d 1135, 1138 (Ala. 1998) ("The word 'shall' is clear

and unambiguous and is imperative and mandatory."). Section § 6-6-20(b)(2) unambiguously states that the party requesting mediation "shall" bear the costs of the mediation, unless the parties agree otherwise.

This court has previously construed the cost requirement in § 6-6-20(b)(2) as mandatory. In Mackey v. Mackey, supra, the mother in that case moved the trial court to order the parties to mediate their dispute. The father in that case argued, among other things, that the trial court had erred in ordering the parties to mediate over his objection. Citing § 6-6-20(b)(2), this court rejected that argument. 799 So. 2d at 207. The father also argued that the trial court had erred in ordering him to pay, among other things, a portion of the costs of the mediation requested by the mother. This court agreed with the father, stating that, under the facts of that case and "[b]ecause of the provisions of § 6-6-20(b)(2), the trial court erred by ordering the father to pay the costs of mediation." Mackey v. Mackey, 799 So. 2d at 208.

Rule 2, Alabama Civil Court Mediation Rules, also supports a conclusion that the cost provision in § 6-6-

20(b)(2) is to be interpreted as binding. That rule provides, in part:

> "Parties to a civil action may engage in mediation by mutual consent at any time. The court in which an action is pending shall order mediation when one or more parties request mediation or it may order mediation upon its own motion. In all instances except where the request for mediation is made by only one party, the court may allocate the costs of mediation, except attorney fees, among the parties. In cases in which only one party requests mediation, the party requesting mediation shall pay the costs of mediation, except attorney fees, unless the parties agree otherwise."

(Emphasis added.)

The husband contends that because he sought mediation as an alternative to his request that the action be set for a final hearing, the trial court's August 6, 2019, order could be interpreted as an exercise of the trial court's discretion to set mediation on its own motion and, therefore, that the trial court could properly order the parties to share the costs of the mediation. In making that argument, the husband relies on § 6-6-20(b)(3). We reject the husband's argument. Section 6-6-20(b)(3), by its clear and express language, applies only when "no party requests mediation." In his August 6, 2019, motion, the husband did request mediation. Also, in its August 6, 2019, order, the trial court stated

that it "granted" the husband's August 6, 2019, motion requesting that the matter either be scheduled for a hearing or be referred for mediation. The materials submitted to this court do not indicate that the trial court ordered mediation ex mero motu, i.e., in the absence of a request of a party, such that § 6-6-20(b)(3) could be said to govern this action.

Because the materials submitted to this court demonstrate that the husband moved for an order requiring the parties to mediate, and that the wife has filed in the trial court documents demonstrating that she did not agree to mediation, under the clear and mandatory language of § 6-6-20(b)(2), the husband, as the party moving for mediation, must, i.e., "shall," pay the costs of the mediation. Ex parte Prudential Ins. Co. of America, supra; Bergob v. Scrushy, supra; Mackey v. Mackey, supra. The trial court erred in ordering the wife to pay a portion of the costs of the mediation. Accordingly, we grant the wife's petition for a writ of mandamus. The trial court is directed to vacate that part of its August 6, 2019, order requiring the wife to share in paying the costs of the mediation.

PETITION GRANTED; WRIT ISSUED.

Moore, Donaldson, Edwards, and Hanson, JJ., concur.