

REL: February 26, 2021

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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Ex parte Standard Furniture Manufacturing Co., LLC

PETITIONS FOR WRIT OF MANDAMUS

(In re: William K. DeFee

v.

Standard Furniture Manufacturing Co., LLC, and Millennium
Risk Managers, L.L.C.)

(Conecuh Circuit Court, CV-12-900060, CV-12-900060.01,
and CV-20-900053)

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FRIDY, Judge.

These petitions for the writ of mandamus arise out of an attempt by William K. DeFee to seek enforcement of a workers' compensation judgment ("the 2015 judgment") ordering Standard Furniture Manufacturing Co., LLC ("Standard Furniture"), to pay him permanent-total-disability benefits.¹ The original workers' compensation action was commenced in the Conecuh Circuit Court ("the trial court"), which assigned it case no. CV-12-900060 ("the original action").

On October 15, 2020, DeFee attempted to file in the trial court a "postjudgment motion for contempt" against Standard Furniture and Millennium Risk Managers, L.L.C. ("MRM"), the third-party administrator of workers' compensation benefits for Standard Furniture. In the postjudgment motion, DeFee asserted that Standard Furniture and MRM had "repeatedly" violated the terms of the 2015 judgment by refusing to pay the benefits owed to him when the payments were due.

¹This court affirmed the 2015 judgment, without an opinion. Standard Furniture Mfg. Co. v. DeFee (2141077, July 22, 2016), 231 So. 3d 277(Ala. Civ. App. 2016)(table).

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Specifically, DeFee said, the checks he received as payment were "returned unpaid." According to the materials before this court, DeFee believed that his postjudgment motion initiated a new action for which a filing fee was required and which would be designated as case no. CV-12-900060.01 ("the .01 action"). However, when the Conecuh Circuit clerk's office ("the clerk's office") attempted to enter the "new" action on the Alacourt judicial electronic-filing system, the system would not permit the addition of a .01 designation to the case number for the original action.

On October 21, 2020, DeFee filed a motion asking the trial court to enter an "order relating to filing fee, AlaCourt, and consolidation." In a proposed order he submitted to the trial court, DeFee requested that the trial court designate the new action that he believed had been initiated by the filing of his postjudgment motion as the .01 action, collect a filing fee for that action, and consolidate the original action, the .01 action, and case no. CV-20-900053 ("the 53 action"), which he had previously commenced in the trial court and which asserted claims that were identical to those raised in his postjudgment motion. On November 30, 2020, the trial court entered an order that essentially adopted DeFee's proposed order. In

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addition to directing the acceptance of the .01 action and the filing fee, the trial court consolidated the .01 action with the 53 action and ordered that the action was to proceed under the .01 designation. The trial court also directed "Alacourt" to issue written guidance on whether a filing fee was required for the filing of the postjudgment motion initiating the .01 action seeking enforcement of the 2015 judgment. If "Alacourt" determined that a filing fee was not required, the trial court wrote, then the clerk's office should return the fee to DeFee's attorney after the proceedings are completed and the time for appeal has run.

On January 8, 2021, Standard Furniture filed three timely petitions to this court, each seeking a writ of mandamus directing the trial court to vacate its order creating the .01 action, consolidating the .01 and the 53 actions, and seeking guidance from "Alacourt" on whether a filing fee is required for the filing of the postjudgment motion initiating the .01 action alleging that Standard Furniture had failed to comply with the 2015 judgment.

In its brief in support of the mandamus petitions, Standard Furniture also asks this court to dismiss or, alternatively, to transfer the 53 action

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to Baldwin Circuit Court. After Standard Furniture filed the mandamus petitions, however, the trial court dismissed the 53 action. Accordingly, this court's case no. 2200253, which concerns the 53 action, is dismissed as moot.

This court's case no. 2200251 concerns the original action. In its brief to this court, Standard Furniture acknowledges that the trial court retained jurisdiction over that action. In studying Standard Furniture's brief, we could not identify any issues pertaining to the original action, and Standard Furniture does not seek any relief in the original action. A writ of mandamus "is an extraordinary and drastic writ" that we will issue "only when (1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked." Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000). In case no. 2200521, Standard Furniture has not identified any act that the trial court has failed to perform in regard to the original action. It follows, then, that Standard Furniture has also not demonstrated that it has a clear legal right to any specific relief that was

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not already addressed by the trial court in the original action. Standard Furniture has failed to provide us with any basis upon which to issue a writ of mandamus in case no. 2200251. Accordingly, that petition is denied.

The only issues remaining before this court pertain to the .01 action, which is the subject of this court's case no. 2200252. Standard Furniture asserts that the .01 action is improper and that DeFee was not required to initiate that action or to pay a filing fee to invoke the trial court's jurisdiction regarding his contempt allegations against Standard Furniture and MRM for their alleged failure to timely pay him the workers' compensation benefits owed pursuant to the 2015 judgment.

At the outset, we note that Standard Furniture would suffer no harm if DeFee paid a filing fee he was not required to pay. Indeed, in its brief to this court, Standard Furniture fails to describe the relief it hopes to obtain if it prevails on this issue. Nonetheless, we will address the question whether a filing fee is required under these circumstances because that question concerns the trial court's jurisdiction.

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The materials before us indicate that DeFee wanted to ensure that he had done all that was necessary to bring a viable contempt claim against Standard Furniture and MRM. In seeking to pay a filing fee, DeFee referred the trial court to Judge Thomas's dissent in Stephens v. Nelson, 141 So. 3d 1073, 1079 (Ala. Civ. App. 2013), in which she opined that the judgment entered on the claims for contempt and injunctive relief that were the subject of that appeal was void because no filing fee had been paid. Accordingly, Judge Thomas wrote, the trial court never obtained jurisdiction over those claims and the judgment appealed from was void. Judge Thomas stated that the "new actions for contempt and an injunction should have been assigned a '.01' suffix by the trial court's clerk and would have required the payment of a new filing fee and new service of process pursuant to Rule 4, Ala. R. Civ. P." Id. at 1080.

Standard Furniture argues that the initiation of new actions with .01 designations and the payment of additional filing fees are required only in postjudgment contempt proceedings arising from domestic-relations cases. Alabama law does not support that contention, however. In Hicks v. Hicks, 130 So. 3d 184 (Ala. Civ. App. 2012), this court dismissed an

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appeal of an order denying a postjudgment contempt motion arising from a boundary-line dispute between two adjacent landowners, explaining that, because no filing fee had accompanied the filing of the motion for contempt, the trial court had lacked subject-matter jurisdiction and its order was void.

Based on Hicks and the cases cited therein, we conclude that Standard Furniture has failed to demonstrate that DeFee was not required to pay a filing fee or that it has a clear legal right pertaining to this issue. Accordingly, we decline to issue a writ of mandamus based on this issue. Ex parte Flint Constr. Co., 775 So. 2d at 808.

Standard Furniture also contends that the trial court abused its discretion by denying its request to transfer the .01 action from Conecuh County to Baldwin County. Standard Furniture asserts that venue is proper in Baldwin County because Baldwin County is the location of its principal place of business and the location where, it says, "all contemptuous conduct alleged" against it took place.

The procedural posture of the proceedings with regard to this issue is ambiguous. Although in its mandamus petition Standard Furniture

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appears to acknowledge that, in its November 30, 2020, order, the trial court denied Standard Furniture's request to transfer the action to Baldwin County, the materials before this court indicate that Standard Furniture has since filed in the trial court a "motion for clarification and motion to dismiss for improper venue or to change venue" regarding the .01 action. On December 17, 2020, Standard Furniture filed a motion asserting that the .01 action is a distinct action separate from the original action. In that motion, Standard Furniture argued that it "understands the effect of the Court's [November 30, 2020,] order to be that [DeFee's] request for contempt [is] now pending in [the .01] action and [is] no longer being considered in [the original action]." Standard Furniture argues, therefore, that venue of the distinct and separate .01 action is proper in Baldwin County. At the time the mandamus petitions were filed, however, the trial court had not yet entered an order regarding Standard Furniture's motion for clarification.

In its November 30, 2020, order, the trial court directed that the postjudgment motion filed in the original action was to be designated as the .01 action and consolidated with the 53 action, which was still pending

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at that time. It then explained that it had the power to interpret its own judgment and that the issues in the .01 action and the 53 action were identical. Accordingly, the trial court stated, the 53 action "fall[s] outside of the venue arguments advanced by [Standard Furniture]." In other words, in its November 30, 2020, order, the trial court rejected Standard Furniture's argument that the proper venue in which to consider the contempt action, regardless of its case-number designation, was in Conecuh County.

The question of proper venue is determined at the commencement of the action. Ex parte Pratt, 815 So. 2d 532, 534 (Ala. 2001); see also Rule 82(d)(1), Ala. R. Civ. P. "If venue is not proper at the commencement of an action, then, upon motion of the defendant, the action must be transferred to a court where venue would be proper." Ex parte Overstreet, 748 So. 2d 194, 196 (Ala. 1999). "The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for the writ of mandamus." Ex parte Alabama Great So. R.R., 788 So. 2d 886, 888 (Ala. 2000).

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Standard Furniture's challenge to venue is premised on its contention that the .01 action initiated by the postjudgment motion should be treated as a court would treat a new tort action or a new workers' compensation action and not as a court would treat a motion seeking relief based on a party's alleged failure to abide by the terms of a judgment that the trial court has already entered against it. However, a trial court has inherent authority to interpret, clarify, and enforce its own final judgments. Helms v. Helms' Kennels, Inc., 646 So. 2d 1343, 1347 (Ala.1994) (noting that "a trial court does have residual jurisdiction or authority to take certain actions necessary to enforce or interpret a final judgment"). In Ex parte N.M., 132 So. 3d 1088, 1092 (Ala. Civ. App. 2013) (quoting 17 C.J.S. Contempt § 105 (2011)), this court explained that " 'a contempt proceeding ordinarily can be instituted in the court that issued the order which allegedly was violated. Such a proceeding normally cannot be entertained by any other court.' " See also 17 Am. Jur. 2d Contempt § 151 (2014) ("[Venue] is fixed and remains with the court in which contempt is committed or whose authority is defied.")

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Standard Furniture has not cited any authority that would permit a circuit court in a county different from the county of a circuit court that entered a judgment to consider whether a party subject to that judgment has failed to comply with its terms. Thus, Standard Furniture has failed to demonstrate that it has a clear legal right to a change of venue of the .01 action, and we will not issue a writ of mandamus as to this issue.

Standard Furniture also contends that the .01 action is barred by the exclusive-remedy provisions of the Workers' Compensation Act ("the Act"), § 25-5-1 et seq., Ala. Code 1975. A trial court's denial of a claim of immunity by an employer made pursuant to the exclusive-remedy provisions of the Act is reviewable by a petition for the writ of mandamus. Ex parte Salvation Army, 72 So. 3d 1224, 1228 (Ala. Civ. App. 2011). Those provisions, §§ 25-5-52 and -53, Ala. Code 1975, state that, if an employee's injury or death is covered by the Act, the Act provides the employee's exclusive remedy for that injury or death. The first provision, § 25-5-52, states that the Act provides the exclusive remedy "for an injury or death occasioned by an accident or occupational disease proximately resulting from and while [an employee is] engaged in the actual

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performance of the duties of his or her employment and from a cause originating in such employment or determination thereof." Similarly, § 25-5-53 provides that, except as provided for under the Act, no employer shall be civilly liable for an employee's injury or death that is "due to an accident or to an occupational disease while the employee is engaged in the service or business of the employer, the cause of which accident or occupational disease originates in the employment." In Lowman v. Piedmont Executive Shirt Manufacturing Co., 547 So. 2d 90, 92 (Ala. 1989), our supreme court held that the exclusive-remedy provisions of the Act "apply only to limit the liability of an employer or its insurer to the statutorily prescribed claims for job-related injuries." See also Ex parte Rock Wool Mfg. Co., 202 So. 3d 669, 674 (Ala. 2016) (discussing the applicability of the exclusive-remedy provisions of the Act to tort claims).

In this case, DeFee is not alleging any type of tort claim against Standard Furniture for his work-related injury. Instead, he is seeking relief based on his allegation that Standard Furniture has failed to abide by the terms of the 2015 judgment. Standard Furniture provides no support for the proposition that the exclusive-remedy provisions of the Act

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were intended to provide an employer immunity from consequences arising from its failure to obey a judgment entered in a workers' compensation action, nor have we found any such support.

Having failed to demonstrate that it has a clear legal right to immunity from DeFee's contempt claim asserted in the .01 action based on the exclusive-remedy provisions of the Act, Standard Furniture is not entitled to a writ of mandamus as to this issue.

Finally, Standard Furniture contends that the trial court's November 30, 2020, order must be vacated because, it says, the order improperly defers to the discretion of a nonjudicial body with respect to a judicial decision. Specifically, Standard Furniture argues, the trial court improperly directed "Alacourt" to determine if a filing fee was required for the filing of the postjudgment motion alleging contempt. It is worth reiterating that Standard Furniture is not the party that must pay a filing fee in this case and that Standard Furniture does not contend that DeFee has not paid a required filing fee. Thus, Standard Furniture has failed to demonstrate that, even if the trial court erred in seeking guidance from "Alacourt" regarding whether a filing fee is necessary, the order

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containing that instruction must be vacated. Ultimately, whether DeFee paid a filing fee that was not necessary has no bearing on Standard Furniture's legal rights in this case. There is no "remedy" available to Standard Furniture because it has not been wronged by DeFee's payment of a filing fee. Accordingly, there is no basis for issuing a writ of mandamus regarding this issue.

Standard Furniture has failed to demonstrate a basis for this court to issue a writ of mandamus in case no. 2200252, involving the .01 action. Accordingly, the writ requested in that case is denied.

2200251 -- PETITION DENIED.

Edwards and Hanson, JJ., concur.

Thompson, P.J., and Moore, J., concur in the result, with writings.

2200252 -- PETITION DENIED.

Edwards and Hanson, JJ., concur.

Moore, J., concurs in part and concurs in the result, with writing.

Thompson, P.J., concurs in the result, with writing.

2200253 -- PETITION DISMISSED.

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

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Thompson, P.J., concurs in the result, with writing.

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MOORE, Judge, concurring in the result in case number 2200251 and concurring in part and concurring in the result in case number 2200252.

The controversy below stems from the alleged failure and/or refusal of Standard Furniture Manufacturing Co., LLC ("the employer"), and its workers' compensation third-party administrator, Millennium Risk Managers, L.L.C. ("Millennium"), to timely pay permanent-total-disability benefits to William K. Defee ("the employee") pursuant to a July 1, 2015, judgment ("the workers' compensation judgment") entered by the Conecuh Circuit Court ("the trial court") in case number CV-12-900060 ("the workers' compensation action").

"The Legislature has provided a remedy for the employee when a payment is delayed by an employer acting within the bounds of its proper role." Hobbs v. Alabama Power Co., 775 So. 2d 783, 788 (Ala. 2000). Section 25-5-59(b), Ala. Code 1975, a part of the Alabama Workers' Compensation Act ("the Act"), § 25-5-1 et seq., Ala. Code 1975, provides, in pertinent part, that, "[i]f any installment of compensation payable is not paid without good cause within 30 days after it becomes due, there shall be added to the unpaid installment an amount equal to 15 percent

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thereof, which shall be paid at the same time as, but in addition to, the installment." Section 25-5-86(1), Ala. Code 1975, which is also a part of the Act, provides:

"If the award, order, or settlement agreement is payable in installments and default has been made in the payment of an installment, the owner or interested party may, upon the expiration of 30 days from the default and upon five days' notice to the defaulting employer or defendant, move for a modification of the award or settlement agreement by ascertaining the present value of the case, including the 15 percent penalty provision of [Ala. Code 1975, §] 25-5-59, under the rule of computation contained in [Ala. Code 1975, §] 25-5-85, and upon which execution may issue. The defaulting employer may relieve itself of the execution by entering into a good and sufficient bond, to be approved by the judge, securing the payment of all future installments, and forthwith paying all past due installments with interest and penalty thereon since due. The bond shall be recorded upon the minutes of the court."

In my opinion, the Act limits an employee solely to the remedies set forth in §§ 25-5-59 and 25-5-86 and does not authorize an employee to use contempt proceedings as a supplemental remedy for a delay in payments of court-ordered compensation. See Ala. Code 1975, § 25-5-53 ("The rights and remedies granted in [the Act] to an employee shall exclude all other rights and remedies of the employee, his or her personal representative,

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parent, dependent, or next of kin, at common law, by statute, or otherwise on account of injury, loss of services, or death.") . However, the employer in this case has not argued that point; instead, throughout the proceedings below and in its brief to this court, the employer has essentially conceded that the employee can maintain a claim for contempt, arguing only that the exclusive-remedy provisions of the Act require the contempt claim to be adjudicated solely in the workers' compensation action. Thus, the case is not in an appropriate posture for this court to address the issue whether the Act permits an employee to maintain a contempt action based on a delay in payments of compensation, see Clark v. Clark, 58 So. 3d 1276, 1281 n.3 (Ala. Civ. App. 2010) (citing Schiesz v. Schiesz, 941 So. 2d 279, 289 (Ala. Civ. App. 2006)) (holding that it is not the function of an appellate court to advocate a position on behalf of a petitioner, especially one in direct conflict with the petitioner's own position), which appears to be one of first impression,

Putting aside the issue of the viability of the contempt claim, the issues actually before the court concern only the procedure by which that claim is being presented and adjudicated. See Alabama Forest Prods.

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Indus. Workmen's Comp. Self-Insurers' Fund v. Harris, 194 So. 3d 921, 925 (Ala. Civ. App. 2014) (holding that an appellate court reviews a case based on the legal theories litigated below, even if they are incorrect in principle). In the proceedings below, the employee initially asserted his contempt claim in a separate civil action, which was assigned case number CV-20-900053. The employee took the position that the law required the filing of a separate action, along with the payment of an appropriate filing fee, in order to invoke the jurisdiction of the trial court to rule on the contempt claim. The employer, on the other hand, maintained that the contempt claim could be raised in a simple postjudgment motion in the original workers' compensation action without the need for a filing fee. The parties also contested whether the trial court was the proper venue to hear the action. Ultimately, the trial court entered an order directing the trial-court clerk to create a new civil action, case number CV-12-900060.01, for the contempt claim, to conditionally accept a filing fee for that civil action, subject to guidance from the administrators of the Alacourt judicial electronic-filing system as to the propriety of that fee, to dismiss case number CV-20-900053, and to consolidate case number CV-

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12-900060.01 with the workers' compensation action. As the main opinion points out, the trial court also denied the employer's motion to change venue. The employer petitions this court to issue a writ of mandamus directing the trial court to vacate that order.

I concur that the petition for the writ of mandamus seeking to require the trial court to adjudicate the contempt claim in the workers' compensation action is due to be denied. Caselaw clearly provides that a party seeking to enforce a final judgment through a contempt proceeding must initiate a new civil action separate from the original action by filing a petition under Rule 70A(c)(1), Ala. R. Civ. P., and paying a filing fee. See Morgan v. Morgan, 183 So. 3d 945, 954 (Ala. Civ. App. 2014). No language in Rule 70A or Alabama caselaw authorizes the initiation of a contempt proceeding by the mere filing of a postjudgment motion without the payment of an appropriate filing fee. To the contrary, any pleading or motion that purports to initiate a contempt proceeding after entry of a final judgment and without the payment of a filing fee is treated as a legal nullity. See Hall v. Hall, 122 So. 3d 185, 192 (Ala. Civ. App. 2013). In this case, the employee did not invoke the jurisdiction of the trial court by

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asserting the contempt claim in a postjudgment motion filed in the workers' compensation action, as the employer contends.

On the other hand, the materials before this court indicate that the contempt claim is properly before the trial court solely through case number CV-12-900060.01 because that is now the only action in which a petition to hold the employer in contempt is pending and in which the appropriate filing fee has been collected. I recognize that the trial court only conditionally collected the filing fee in case number CV-12-900060.01, subject to a later determination by the administrators of the Alacourt system, which is operated by the Alabama Administrative Office of Courts, regarding whether the fee was due to be collected. The trial court erred in this respect because it could not delegate to an administrative state agency the purely legal jurisdictional question of whether a filing fee was due to be collected. See Hall v. Hall, 717 So. 2d 416 (Ala. Civ. App. 1998) . As a matter of law, the filing fee was payable, as the trial court should have determined. See Hicks v. Hicks, 130 So. 3d 184 (Ala. Civ. App. 2012); Opinion of the Clerk No. 17, 363 So. 2d 97 (Ala. 1978), overruled on other grounds, Opinion of the Clerk No. 43, 450 So. 2d 1094

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(Ala. 1984). However, that error has not deprived the trial court of jurisdiction over case number CV-900060.01 and has not aggrieved the employer so as to warrant mandamus relief. See Rule 45, Ala. R. App. P.

The employer maintains that the trial court's order will require it to simultaneously defend two separate actions on the same contempt claim in violation of Ala. Code 1975, § 6-5-440. That Code section provides:

"No plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and against the same party. In such a case, the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously, and the pendency of the former is a good defense to the latter if commenced at different times."

However, as explained earlier, the postjudgment motion filed in the workers' compensation action is a legal nullity. The contempt claim is validly pending only in case number CV-12-900060.01. That action was consolidated with the workers' compensation action, but the consolidation order does not result in the employer's having to defend the contempt claim in two different actions, as the employer mistakenly contends. Section 6-5-440 simply does not apply in this situation.

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Finally, the employer argues that the trial court is an improper venue to adjudicate the contempt claim in case number CV-900060.01. I fully concur with the main opinion that the trial court, as the court that entered the judgment allegedly violated, is the proper venue to adjudicate the contempt claim.

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THOMPSON, Presiding Judge, concurring in the result.

I concur in the result reached by the main opinion as to all three mandamus petitions filed by Standard Furniture Manufacturing Co., LLC. As I explained in my writings in Hicks v. Hicks, 130 So. 3d 184, 190-94 (Ala. Civ. App. 2012) (Thompson, P.J., dissenting), and Merriam v. Davidson, 184 So. 3d 411, 414 (Ala. Civ. App. 2015), (Thompson, P.J., concurring in the result), I disagree that a failure to pay a filing fee should serve to divest a trial court of subject-matter jurisdiction. However, this court is bound by the precedent of our supreme court, and in Johnson v. Hetzel, 100 So. 3d 1056, 1057 (Ala. 2012), our supreme court seemed to agree that the payment of a filing fee, or the approval of an affidavit of substantial hardship that would waive that fee, was a jurisdictional prerequisite to maintaining an action in a trial court. More recently, our supreme court again stated: "Caselaw clearly dictates that the payment of a filing fee or the preapproval of the hardship statement is a jurisdictional prerequisite to the commencement of [a plaintiff's] action." Ex parte Courtyard Citiflats, LLC, 191 So. 3d 787, 790 (Ala. 2015).