REL: April 30, 2021

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200302

Ex parte Taylor Peake

PETITION FOR WRIT OF MANDAMUS

(In re: Taylor Peake

v.

Spencer Wyatt)

(Jefferson Circuit Court, DR-18-900658.01)

2200303

Ex parte Taylor Peake

PETITION FOR WRIT OF MANDAMUS

(In re: Taylor Peake

v.

Spencer Wyatt)

(Jefferson Circuit Court, DR-18-900658.02)

2200304

Ex parte Taylor Peake

PETITION FOR WRIT OF MANDAMUS

(In re: Taylor Peake

v.

Spencer Wyatt)

(Jefferson Circuit Court, DR-18-900658.03)

EDWARDS, Judge.

This is the second set of mandamus petitions arising out of acrimonious postdivorce disputes between Taylor Peake and Spencer

Wyatt, who were divorced pursuant to a judgment entered on March 22, 2019 ("the divorce judgment"), by the Domestic Relations Division of the Jefferson Circuit Court ("the trial court"). See Ex parte Wyatt Props., LLC, [Ms. 2200159, April 16, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021). Peake petitions this court for writs of mandamus directing the trial court to enter orders disqualifying Wyatt's counsel, based on a purported conflict of interest, from representing him in three matters pending before the trial court and primarily relating to the custody of the parties' child. This court entered an order consolidating Peake's petitions. We deny Peake's petitions because she has failed to demonstrate that the trial court erred in determining that her motion to disqualify was untimely and that she thus had waived the purported conflict of interest.

A more detailed discussion of the litigation between Peake and Wyatt is discussed in Ex parte Wyatt Properties. In sum, the parties' divorce judgment was based on a settlement agreement entered between Wyatt and Peake ("the settlement agreement"), which was incorporated into the divorce judgment and included provisions regarding the division of marital property and custody of the parties' child, among other matters.

As to the division of marital property, the settlement agreement provided, in pertinent part, that Wyatt and Peake would "continue to own and manage [Wyatt Properties, LLC,] and all holdings of said entity as 50-50 co-owners" and that Wyatt Properties would "continue to own and manage Beacon Towers, LLC and all holdings of said entity as its sole member." We note that Peake was represented by an attorney in the divorce proceedings, but that attorney is apparently not involved in the postdivorce proceedings at issue; Wyatt appeared pro se in the divorce proceedings.

According to Wyatt, and based on filings included in the materials submitted to this court in Ex parte Wyatt Properties, of which we take judicial notice, Peake began instituting a series of legal proceedings against him after August 15, 2019, when he informed her that his girlfriend, who resided in Georgia, was pregnant with a child who had been conceived before the entry of the divorce judgment; the parties allegedly had separated in January 2018. See Graham v. Graham, [Ms. 2180856, Sept. 11, 2020] ___ So. 3d ___, ___ n.1 (Ala. Civ. App. 2020) (discussing this court's authority to take judicial notice of its own records

relating to a previous proceeding in the court). According to Peake, Wyatt made verbal and physical threats against her in connection with their discourse in August 2019. On August 24, 2019, Peake filed a petition for a modification of custody in the trial court, which was assigned case number DR-18-900658.01 ("the modification action"). Peake alleged in her modification petition that a material change of circumstances had occurred since the entry of the divorce judgment, specifically that Wyatt's girlfriend posed a threat to the well-being of the parties' child and that Wyatt had been leaving the parties' child in the girlfriend's care when he visited her. Peake sought a judgment preventing the parties' child from being in the girlfriend's presence, awarding Peake sole legal custody and sole physical custody of the child, awarding Peake child support, and requiring that Wyatt's visitation with the child be supervised.[1]

After Peake commenced the modification action, Wyatt contacted Crittenden Partners, P.C., and retained three attorneys from that law

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[1]Peake, on behalf of herself and purportedly on behalf of Wyatt Properties and Beacon Towers, also eventually asserted claims against Wyatt in the modification action regarding matters concerning Wyatt Properties and Beacons Towers. See Ex parte Wyatt Properties, supra.

firm -- Judith Crittenden, Deborah Gregory, and Paige Yarbrough -- to represent him. On August 26, 2019, Crittenden and Yarbrough filed an answer on behalf of Wyatt in the modification action, and, on the following day, they filed a "Verified Petition for Rule Nisi and Petition for Modification" in the trial court, which was assigned case number DR-18-900658.02 ("Wyatt's contempt action"). In his contempt petition, Wyatt alleged that, when Peake learned that his girlfriend was pregnant in mid-August 2019, Peake made certain threatening remarks to him and also had told the parties' child that Wyatt did not love the child and might move away and never return. According to Wyatt, Peake was attempting to alienate the parties' child from him and had refused to comply with the physical-custody-exchange provisions in the divorce judgment. Wyatt sought an order holding Peake in civil contempt and criminal contempt, prohibiting either party from communicating negative information to the child regarding the other party, and modifying a visitation provision regarding Wyatt's parents that was part of the settlement agreement incorporated into the divorce judgment. The instructions for service of Wyatt's contempt petition stated that it was to be served on Peake, at her

home, by a personal process server; those instructions appeared immediately below Wyatt's verification and an executed signature line for Crittenden Partners, as his attorneys. The signature line for Crittenden Partners included the electronic signature of Crittenden and also included Crittenden's and Yarbrough's names under Crittenden's electronic signature.

On August 29, 2019, Peake filed in the trial court a verified motion seeking a temporary restraining order that would prevent Wyatt from leaving the State of Alabama with the parties' child or allowing the child to have any contact with Wyatt's girlfriend. The verified motion was executed by Peake and included a certificate of service indicating that it was served on Yarbrough. Based on the pertinent certificates of service, Yarbrough was also served with Peake's amended pleadings in the modification action on September 29, 2019; December 9, 2019; and January 21, 2020, and Crittenden and Gregory, of Crittenden Partners, as "[c]ounsel for ... Wyatt," were also served with Peake's last amended pleading.

2200302, 2200303, and 2200304

On January 7, 2020, Peake filed a "Petition for Rule Nisi" in the trial court, which was assigned case number DR-18-900658.03 ("Peake's contempt action"). Among other matters, Peake alleged that Wyatt had violated provisions of the divorce judgment regarding overnight stays involving guests of the opposite sex, regarding visitation with Wyatt's parents, and regarding the payment of certain shared extracurricular expenses for the child. In part, Peake sought an order holding Wyatt in civil contempt and criminal contempt for allegedly violating the divorce judgment and requiring Wyatt to reimburse her for the extracurricular expenses.[2]

On September 15, 2020, Peake amended her contempt petition to add several additional claims relating to child-custody matters and alleged violations of the divorce judgment. That amended contempt petition was verified and executed by Peake and was also executed by her domestic-relations counsel, Julia G. Williams, of Peeples Family Law, and Adrienne

[2]Peake further alleged that Wyatt had not complied with certain provisions of the divorce judgment regarding Wyatt Properties and Beacon Towers and the parties' income-tax returns, and she also sought an order addressing those matters.

Moffett Powell. The certificate of service for the amended contempt petition reflects that it was served on Crittenden, Gregory, and Yarbrough, of Crittenden Partners, as "[c]ounsel for ... Wyatt."

On September 22, 2020, Peake filed a motion to disqualify Crittenden Partners from representing Wyatt in the modification action, Wyatt's contempt action, and Peake's contempt action. In an affidavit that Peake submitted in support of her motion to disqualify, she averred that, in March 2018, Matt Hinshaw, an attorney with Bradley, Arant, Boult, and Cummings, LLP, who was working with Peake on business matters, had referred her to Laura Montgomery Lee regarding Peake's anticipated divorce from Wyatt.[3] Lee is an attorney with Crittenden Partners. Peake averred, in relevant part, that

> "5. On or about March 13, 2018, I called and spoke with ... [Lee] <u>for approximately an hour</u> telling her what I would like to see in a final agreement for divorce, the custody arrangements for our minor child and discussed related issues regarding my anticipated divorce.
>
> "6. [Lee] followed up our conversation with an email and sent a checklist for me to complete.

[3]When Peake spoke with Lee, her name was Laura Montgomery.

> "7. After careful consideration I chose different legal counsel to represent me during my divorce.
>
> "....
>
> "10. In the summer of 2019, ... Gregory and ... Yarbrough of [Crittenden Partners] began representing ... Wyatt in our divorce and custody modifications.
>
> "11. I was unaware until August of 2020 that ... Lee is an attorney with [Crittenden Partners]."

(Emphasis added.) Peake asserted that, based on her purported disclosures to Lee, Crittenden Partners had a conflict of interest preventing it from representing Wyatt. The gist of Peake's argument in her motion to disqualify was that, even though Peake had not been a client of Crittenden Partners, the law applicable to conflicts of interest regarding a former client should be applied to her, as Crittenden Partners' former prospective client.

In addition to her affidavit, Peake also attached correspondence regarding her attempt to have Crittenden Partners withdraw from representing Wyatt. Included as part of the attached correspondence was a letter from counsel who had filed Peake's motion to disqualify, Slate McDorman, to Lee about the alleged conflict of interest and Lee's August

26, 2020, response to that letter. In Lee's August 26, 2020, response, she stated:

> "First, I would like to make it clear that I have absolutely no memory of every speaking with ... Peake. However, as my firm and I take any conflict issues very seriously, I did an extensive and thorough search of all our management and billing software as well as my emails (including archived emails). Please see attached the few emails that I located between myself and ... Peake from March of 2018.
>
> "As I explained to ... Peake in the attached emails, our office procedure is to run a conflict check and set up a one-hour consultation for any new client. As you can see from ... Peake's responses, she was aware that a consultation would be necessary to become a client and simply wanted a, in her words, 'quick call' to make sure it was a 'good fit.' I agreed to take a few minutes to speak and was clear about our procedure. Without a formal consultation and the payment of a consultation fee, I would have only provided ... Peake with general information that could be obtained from any of the many presentations I have given about the divorce process: how to keep fees low, different custodial schedules, etc. I would not have discussed with or requested any confidential information from ... Peake and I would not have given ... Peake any specific legal advice because I am aware of the bounds of an attorney-client relationship. My follow up email to ... Peake is consistent with providing only generic information. A generic check list and sample parenting plan are attached to my email as well. Nothing in the follow up email is specific to ... Peake or her case. From many years of working with ... Crittenden, I have learned that advice should not be given for free.

> "Should ... Peake have even scheduled a consultation, she would have been entered into our client management software so that she would appear[] for any future conflict checks. We do this even when a consultation cancels or does not show up for their appointment. Only then would ... Peake have been asked to fill out our intake forms where information regarding assets, custody, etc. is requested. ... Peake never scheduled a consultation, never filled out any forms and was never entered into our client management software. Clearly, ... Peake did not find us to be a 'good fit' and determined that she did not want to schedule a consultation as required to become a client of Crittenden Partners. As such, ... Peake is not now and has never been a client of our firm.
>
> "I must say that I am surprised that ... Peake would allege that she was unaware of my being associated with Crittenden Partners. My email [address], which she clearly typed, contains Crittenden Partners. Our logo is prominently displayed on my emails and the office she would have called, if she did call for a conflict check as she claims, would have answered 'Crittenden Partners.' I would certainly think that if ... Peake remembers this call so clearly that she is positive about what was discussed, she would have had some memory of my association with Crittenden Partners. To date, ... Wyatt has been represented by Crittenden Partners for over one year. Over that year, ... Peake has seen numerous filings stating the firm name. ... Peake sat in a courtroom with ... Crittenden herself over the course of a two-day hearing where testimony was taken by ... Crittenden. At no point during any of the numerous hearings, including a four-hour hearing following the date of your letter, did ... Peake nor any of the five lawyers representing her raise any allegations of a conflict to the court."

Also attached to Peake's motion to disqualify were copies of e-mail correspondence between Lee and Peake. The first e-mail is from Peake to Lee and is dated March 12, 2018, and stated: "My business attorney, Matt Hinshaw, recommended you for representation in my divorce. If you have some time available this week, I'd like to set up a call." The copy does not reflect any e-mail address for Lee, although it is directed to her. The subject line for the e-mail states: "Re: Recommendation."

The next e-mail is dated March 13, 2018, and reflects a series of communications "Re: Recommendation." From the respective times indicated on those communications, they began with correspondence from Lee, using the e-mail address "lem@crittendenpartners.com," to Peake at 1:16 p.m. The first correspondence stated:

> "I would be happy to assist. Please call our office at [telephone information omitted] so that we can run a conflict check and set up a consultation.
>
> "Laura
>
> "Laura E. Montgomery, Esq.
> Managing Partner
> Crittenden Partners, PC
> [address omitted]
> lem@crittendenpartners.com
> [telephone information omitted]"

Below the foregoing, the e-mail indicates that there was an image, but it is not displayed on the copy of the correspondence. Subsequent communications include a prominent logo for Crittenden Partners in that location.

The foregoing correspondence was followed by a 1:51 p.m. response from Peake that stated:

> "Thanks, Laura.
>
> "I called the office to do a conflict check. There is not one.
>
> "My husband and I want to have an amicable divorce that we're trying to move forward quickly. Based on the nature of it (and our assets), I'd like to schedule a quick call to make sure it's a good fit both ways. If that's not possible without a retainer, I understand. I'm hoping to retain an attorney this week. Thanks for your help."

Lee's 2:02 p.m. response to Peake, from Lee's e-mail address, stated:

> "I am happy to take a few minutes to speak. Our typical procedure would be to schedule an hour long consultation to discuss your needs, the process, the terms of our representation, etc. If after that consultation, you wished to retain our services, we would prepare an engagement letter at that time and simply bill the consultation into the retainer. I am going to be out of the office until approximately 3:00 p.m. Would you be available at 3:15 [p.m.] to talk?"

Peake's e-mail response, which indicates a time of 2:10 p.m., stated:

> "Thanks, Laura. 3:15 [p.m.] would work well. Understood. A quick call should accomplish what I need. If it is ok with you, we can set a consultation and/or retainer after the call, if it is a good fit both ways."

Peake then provided her telephone information, stated that she had a call that should wrap up by 3:00 p.m., and that Lee should "[f]eel free" to call her when Lee was "back at the office. If I miss your call, I'll call you right back."

In addition to the foregoing, a final e-mail dated March 13, 2018, from Lee to Peake reflects that it was sent at 3:53 p.m. and was likewise "Re: Recommendation." That e-mail stated:

> "I have attached an agreement checklist to give you an idea of areas on which you need to agree and a parenting plan that has a similar custodial schedule to what you have discussed. While the parenting plan is fairly standard, we can modify it in any way to fit your [family's] needs. The only section that is absolutely required is the section titled 'Relocation.' That is statutory and the law requires that we include it in any divorce involving children. I hope these are helpful and I look forward to working with you further. I have copied Cherena on this message so you can contact her when you are ready to set up an appointment and she will have an engagement letter ready.
>
> "Laura

> "Laura E. Montgomery, Esq.
> Managing Partner
> Crittenden Partners, PC
> [address omitted]
> lem@crittendenpartners.com
> [telephone information omitted]
> [logo for Crittenden Partners omitted]"

This e-mail reflected that Lee had sent the following attachments: "Agreement Checklist.pdf; Parenting Plan 5-2-2-5.pdf."

Also attached in support of Peake's motion to disqualify was a September 2, 2020, letter from McDorman to Lee that stated:

> "Peake has reviewed your August 26, 2020, correspondence and respectfully disagrees with your assessment of the conversation. ... Peake tells me that you two spoke for over an hour and she shared several confidences about her desires for the marital property division and child custody arrangements. From my review of the present litigation, these issues seem relevant and substantially related to your firm's current representation of ... Wyatt. Based on this information [Crittenden Partners] appears to have an imputed conflict of interest resulting from your 2018 conversation."

(Emphasis added.) McDorman stated that Peake demanded that Crittenden Partners withdraw from representing Wyatt and that "[t]he decision to move forward with a motion for disqualification [would] be made by [her] trial counsel." It is unclear whether Peake's "trial counsel"

referred to (1) Williams or Powell or (2) one of her attorneys from Campbell Partners, LLC, which was representing Peake in her claims related to Wyatt Properties and Beacon Towers (see notes 1 and 2, supra), specifically Andrew P. Campbell and J. Harris Hagood.

Crittenden Partners filed a response opposing Peake's motion to disqualify, arguing, among other things, that Peake had waived any conflict of interest as to Crittenden Partners' representation of Wyatt based on her purported failure to timely object to that representation. In support of its response, Crittenden Partners submitted affidavits from Lee, Crittenden, Yarbrough, Gregory, and Wyatt. Lee averred in her affidavit "[t]hat on or about March 12, 2018, I received an email from ... Peake" and that "I was not contacted by ... Peake prior to the email. I did not know ... Peake prior to receipt of her email. Neither was I familiar with Matt Hinshaw, the attorney whom ... Peake stated recommended me. I do not know how ... Peake obtained my work email which was directed to LEM@crittendenpartners.com." Lee then discussed, among other matters, the above-referenced e-mail communications between Peake and her, noting that "[t]he communications I had with ... Peake on March 12

and 13 did not evolve to the establishment of an attorney-client relationship. ... Peake never retained our firm to represent her." Attached to Lee's affidavit were copies of the documents she had forwarded to Peake in her final March 13, 2018, e-mail.

In Crittenden's affidavit, she averred, among other things, that, after Crittenden Partners began representing Wyatt in August 2019,

> "we have filed responsive pleadings, motions, conducted discovery, attended hearings, and examined witnesses. On multiple occasions ... Peake has been present at the hearings. We have engaged in numerous communications with attorneys for ... Peake during the course of litigation. It was not until August 19, 2020 when ... Lee received a letter from one of ... Peake's attorneys, ... that we were placed on any notice of any alleged potential conflict of interest."

Crittenden's affidavit continued:

> "[T]o date, Crittenden Partners has expended substantial time, resources, and cost in defending ... Wyatt in the [modification action]. The Alabama [State Judicial Information System] Case Detail reflects the number of motions and matters before this Court."[4]

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[4]In addition to the documents included in the materials before us in regard to these petitions, the materials submitted in Ex parte Wyatt Properties included numerous other documents (pleadings, motions, letters, and e-mails) that were filed in the trial court and that reference Crittenden Partners and one or more of Crittenden, Yarbrough, or

Yarbrough's and Gregory's affidavits include averments that are essentially identical to those made by Crittenden.

In addition to the foregoing, in its response to the motion to disqualify, Crittenden Partners mentioned Peake's participation in several hearings before the trial court, specifically alleging that, although Peake and various of her counsel were present at those hearings along with Crittenden, Yarbrough, and/or Gregory, Peake had made no objection regarding Crittenden Partners' representation of Wyatt. Those hearings included in-person hearings on September 10, 2019; October 23, 2019; October 29, 2019; November 22, 2019; and February 26, 2020; and video-conference hearings on June 22, 2020, and August 21, 2020. As to the last mentioned hearing, Crittenden Partners noted that that hearing had occurred after Peake purportedly "discovered" the conflict of interest and

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Gregory, in addition to indicating that those documents were sent to Peake or were filed on her behalf or were served on one or more of her counsel after the commencement of the modification action and before the filing of her motion to disqualify Crittenden Partners. See Graham v. Graham, [Ms. 2180856, Sept. 11, 2020] ___ So. 3d ___, ___ n.1 (Ala. Civ. App. 2020).

that her motion to disqualify was filed a few days after the trial court had granted Wyatt the relief he sought at that hearing.[5]

On November 5, 2020, the day before the scheduled hearing on Peake's motion to disqualify, Peake filed a reply to the response of Crittenden Partners. Peake posited that she was "aware of no factual dispute regarding the evidence in support or in opposition to her motion to disqualify" and that the matter to be resolved was "a matter of law." In support of her reply, Peake filed a second affidavit addressing, among other matters, the contention that she had waived any conflict of interest. Peake averred, in relevant part, that

> "15. In June of 2020, I retained Josh Hornady ('Hornady') in my corporate capacity as managing member of a newly established business, Grey First, LLC ('Grey First'). Hornady was retained to represent Grey First in this Court and defend the third-party claims brought by [Wyatt] against it.
>
> "16. Upon retaining ... Hornady, I was instructed to find and review all correspondence and documents related to [Wyatt] and my business interests for the past several years.

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[5]On September 15, 2020, the trial court entered an order granting Wyatt's motion to require Peake to enroll the parties' child in the Homewood city school system.

I understood my instructions to involve reviewing everything, including email correspondence with anyone I had communicated with regarding [Wyatt], our business interests, or the building held by Beacon Towers at the time of the divorce.

"17. I complied with Hornady's instructions and began to review thousands of pages of paper and electronic files generated over several years.

"18. At some point in or around ... August 2020 I reviewed email correspondence I had had with ... Lee, ... who was known as Laura Montgomery at the time I spoke and emailed with her.

"19. In reviewing this correspondence, I realized for the first time ... Lee is a partner with Crittenden Partners and was so at the time of my 2018 phone call with her.

"20. Following my phone call, ... Lee followed up with an email and a divorce agreement checklist and draft parenting plan but I did not associate ... Lee with Crittenden Partners at that time. The reason I do not recall [Lee] being associated with Crittenden Partners at that time would be I was advised to contact [her] personally and not the firm Crittenden Partners.

"21. Upon making this connection in August of 2020 I asked Hornady if this would be a conflict of interest for Crittenden Partners.

"22. I was advised to speak with an attorney who regularly handles issues regarding attorney conflicts of interest for an opinion if a conflict exists."

Peake then averred that she had contacted McDorman and that "[h]ad I been aware sooner that ... Lee practices with the same law firm representing my ex-husband I would have brought this fact to my attorneys attention then and asked for an opinion if a conflict of interest existed."

In support of her reply, Peake also submitted an affidavit from Hornady, who averred that he had reviewed Peake's second affidavit and that, "[a]s to the portions of ... Peake's affidavit testimony to which I have personal knowledge, her affidavit testimony accurately reflects my knowledge as to the events she testifies to, and her recollection of events is consistent with my recollection of the same events, specifically paragraphs 15-22 of [the second affidavit]."

The trial court held a hearing on the motion to disqualify, at which it received arguments of counsel and admitted into evidence the submissions made in conjunction with the motion to disqualify, the response of Crittenden Partners, and Peake's reply to that response. At the hearing, Peake again contended that the facts were undisputed, a position that was disputed by Crittenden Partners. The arguments

primarily focused on the issue of Peake's status as a former prospective client of Crittenden Partners and how the disqualification rules might apply in that context.

On December 14, 2020, the trial court entered an order denying Peake's motion to disqualify Crittenden Partners in the modification action, Wyatt's contempt action, and Peake's contempt action. Peake filed a motion in each action requesting that the trial court reconsider the December 2020 order; based on the materials before us, it does not appear that the trial court ruled on those motions to reconsider. On January 25, 2021, Peake filed her petitions for a writ of mandamus with this court.

> " 'Mandamus is a drastic and extraordinary writ, to be issued 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 Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003) (quoting Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)). "[R]eview of a lower court's ruling on a motion to disqualify an attorney ... is by a petition for writ of mandamus only." Ex parte Central States

Health & Life Co. of Omaha, 594 So. 2d 80, 81 (Ala. 1992); see also Ex parte Terminix Int'l Co., [Ms. 1180863, Oct. 30, 2020] ___ So. 3d ___, ___ (Ala. 2020).

According to Peake, the pertinent facts are undisputed and the issues presented are questions of law. See Ex parte Tiffin, 879 So. 2d 1160, 1164 (Ala. 2003). She makes several arguments regarding purported error by the trial court. However, we find the failure of her argument regarding the issue of waiver and the doctrine of laches, each of which was a basis for the trial court's order denying Peake's motion to disqualify, to be dispositive.

After concluding that Peake was not a former client of Lee, and thus of Crittenden Partners, the trial court, in its order, stated the following:

> "13. That the Alabama Rules of Professional Conduct do not include Rule 1.18 of the American Bar Association Model Rules of Professional Conduct.[6]

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[6]Alabama has not adopted Rule 1.18, Model Rules of Prof. Cond., which specifically addresses an attorney's duties to his or her prospective clients. The "Scope" provision of the Alabama Rules of Professional Conduct states, in part, that "there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established." See

> "14. On each of ... Lee's email communications with ... Peake, the 'Crittenden Partners, P.C.' logo appeared.
>
> "15. On all pleadings of ... Wyatt, the name 'Crittenden Partners, P.C.' appeared.
>
> "16. That [Peake] knew or should have known at [Wyatt's] first filing in this cause that he was represented by 'Crittenden Partners, P.C.'
>
> "17. That [Peake] knew or should have known that ... Lee was a member of Crittenden Partners, P.C. at the initial filing of this case.
>
> "18. That [Wyatt's] Answer to [Peake's] Petition to Modify was filed in [the modification action] on August 26, 2019 and several hearings have been held beginning September 10, 2019.
>
> "19. That [Peake's] Motion to Disqualify is untimely filed.
>
> "20. That [Peake] waived her right to object to attorney's subsequent representation of adverse interest. See Hall [v. Hall, 421 So. 2d 1270,] 1271 [(Ala. Civ. App. 1982)]."

In Hall v. Hall, 421 So. 2d 1270, 1271 (Ala. Civ. App. 1982), this court stated:

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also Rule 7.3, Ala. R. Prof. Cond. (discussing restrictions regarding an attorney's solicitation of a prospective client).

> "[T]he following is deemed to be a correct statement of applicable law:
>
> > " 'The right of a former client to object to his attorney's subsequent representation of an adverse interest may be expressly or tacitly waived. The right of a former client to urge disqualification of an opposing counsel may be waived by the former client's failure to raise the issue early in the proceedings.'
>
> "7 Am. Jur. 2d, Attorneys at Law § 187, p. 239."

In her petitions, Peake argues that she "raised the issue of disqualification within a reasonable time upon learning of the conflict" and that she "learned of the conflict of interest in August 2020." As to the legal authority in support of her argument, she states:

> " ' "One should file a motion to disqualify within a reasonable time after discovering the facts constituting the basis for the motion." ' [Ex parte Petway Olsen, LLC, [Ms. 1190402, Dec. 11, 2020] ___ So. 3d ___, ___ (Ala. 2020)], [quoting] Ex Parte Intergraph Corp., 670 So. 2d 858[, 860] (Ala. 1995). '[Prior Alabama case law indicates that] laches may bar a disqualification motion if the delay in filing the motion was intentional.' [Id.]"[7]

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[7]See also Ex parte Petway Olsen, LLC, [Ms. 1190402, Dec. 11, 2020] ___ So. 3d ___, ___ (Ala. 2020) (Mitchell, J., dissenting, joined by Bolin, J.) (noting that the issue of disqualification of counsel is within the discretion of the trial court and stating that "we have repeatedly held that the

Peake's entire argument hinges on this court's accepting her assertion that she had no knowledge of the purported conflict of interest until August 2020. However, in its order denying Peake's motion to disqualify, the trial court clearly based the denial of Peake's motion on its determination that she knew or "should have known" that a conflict of interest existed in August 2019. Peake contends that "[t]he facts are undisputed that Peake ... learned of the conflict of interest in August 2020," but she makes no attempt to address how, based on the various evidentiary submissions before the trial court and the reasonable inferences it could draw therefrom, it might have erred by determining that she knew or should have known of the potential conflict in August 2019.[8] Likewise, Peake makes no attempt to address whether, assuming

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applicability of the doctrine of laches is dependent upon the particular facts and circumstances of each case and that the decision whether to apply the doctrine lies squarely within the sound discretion of the trial court").

[8]Peake clearly and unequivocally admitted that her March 2018 e-mail correspondence with Lee was sufficient to notify her that Lee was a partner of Crittenden Partners. See paragraph 19 of Peake's second affidavit ("In reviewing this correspondence, I realized for the first time ... Lee is a partner with Crittenden Partners and was so at the time of my 2018 phone call with her.").

she knew or should have known of the potential conflict in August 2019, the trial court erred by concluding that she had waived any right she may have had to disqualify Crittenden Partners. See Black's Law Dictionary 1043 (11th ed. 2019) (defining "constructive knowledge" as "[k]nowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person").[9] In other words, in Peake's argument regarding the issue of waiver and the doctrine of laches, (1) she has assumed a fact that is contrary to the trial court's factual determination regarding when she knew or should have known of the purported conflict of interest, and she has provided no argument as to why that finding was unsupported by the evidence; (2) she has failed to develop any legal argument regarding how, assuming she had actual knowledge of the purported conflict of interest in August 2019, the trial court erred by applying waiver and the doctrine of laches; and (3) she has failed to develop any legal argument, with citation to pertinent authority,

[9]Constructive knowledge was not at issue in Ex parte Petway Olsen, LLC, [Ms. 1190402, Dec. 11, 2020] ___ So. 3d ___ (Ala. 2020), or Ex parte Intergraph Corp., 670 So. 2d 858 (Ala. 1995), each of which also involved a request to disqualify opposing counsel.

indicating that only actual knowledge (or subjective awareness), and not constructive knowledge, is relevant when a trial court applies waiver or the doctrine of laches to deny a motion to disqualify an attorney based on a purported conflict of interest. See Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001) (discussing the requirements of Rules 21(a) and 28(a), Ala. R. App. P.); see also Rule 28(a)(10), Ala. R. App. P.; Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994) ("[I]t is not the function of [an appellate 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."). This latter failure is particularly important because, even if Peake's argument regarding her former-client or prospective-client relationship with Lee was correct, which we do not address, and even if she had established that the trial court erred by concluding that she had actual knowledge of the conflict of interest before August 2020, she has failed to demonstrate that the trial court erred by concluding that she waived any conflict of interest based on her constructive knowledge of the purported conflict of interest in August 2019. See Denault v. Federal Nat'l Mortg. Ass'n, [Ms. 2180849, May 1,

2020] ___ So. 3d ___, ___ (Ala. Civ. App. 2020) ("[T]he Denaults have not addressed on appeal the trial court's application of the doctrine of judicial estoppel as a bar to their claims against Seterus[, Inc.]. Accordingly, the summary judgment in favor of Seterus must be affirmed."); see also Soutullo v. Mobile Cnty., 58 So. 3d 733, 739 (Ala. 2010) ("[A] challenge to the judgment is waived where, as here, the trial court actually states two grounds for its judgment, both grounds are championed by the appellee, and the appellant simply declines to mention one of the two grounds."); Biz Distrib. Co. v. Crystal Fresh, Inc., 59 So. 3d 717, 719 (Ala. Civ. App. 2010). Accordingly, Peake's petitions must be denied. See Ex parte Short, 434 So. 2d 728, 730 (Ala. 1983) ("The writ of mandamus is not granted unless there is a clear showing of error in the trial court .... The trial court must have abused its discretion and exercised it in an arbitrary and capricious manner."); see also Ex parte Terminix Int'l Co., [Ms. 1180863, Oct. 30, 2020] ___ So. 3d at ___ ("[T]he trial court's denial of the motion to disqualify must be affirmed unless it is established that the ruling 'is based on an erroneous conclusion of law' or that the trial court 'has acted arbitrarily without employing conscientious judgment, has exceeded the

bounds of reason in view of all circumstances, or has so far ignored recognized principles of law or practice as to cause substantial injustice.' Edwards v. Allied Home Mortg. Capital Corp., 962 So. 2d 194, 213 (Ala. 2007).").

Based on the foregoing, Peake's petitions for a writ of mandamus regarding the denial of her motion to disqualify Crittenden Partners are hereby denied.

2200302 -- PETITION DENIED.

2200303 -- PETITION DENIED.

2200304 -- PETITION DENIED.

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

Fridy, J., recuses himself.