

STATE OF ALABAMA -- JUDICIAL DEPARTMENT  
THE SUPREME COURT OF ALABAMA  
OCTOBER TERM, 2014-2015

1140631

Ex parte Scottsdale Insurance Company. PETITION FOR WRIT OF MANDAMUS (In re: Har-Mar Collision, Inc. v. Scottsdale Insurance Company et al.) (Mobile Circuit Court: CV-11-838).

ORDER

The petition for a writ of mandamus of Scottsdale Insurance Company directed to the Honorable Michael A. Youngpeter, Judge of the Circuit Court of Mobile County, having been filed and submitted to the Court,

IT IS ORDERED that the petition for a writ of mandamus is denied.

IT IS FURTHER ORDERED that the emergency motion to stay the proceedings in the trial court is moot.

Moore, C.J., and Stuart, Bolin, Parker, Shaw, Main, Wise, and Bryan, JJ., concur.

Murdock, J., concurs specially.

**I, Julia Jordan Weller, 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 17<sup>th</sup> day of April, 2015**

  
**Clerk, Supreme Court of Alabama**

1140631

MURDOCK, Justice (concurring specially).

Scottsdale Insurance Company seeks mandamus relief from this Court in regard to the Mobile Circuit Court's decision to deny its motion to dismiss certain claims against it for lack of standing. I concur in the denial of this petition.

As a general rule, interlocutory appellate review is not available by way of a petition for a writ of mandamus seeking to overturn a trial court's denial of a motion to dismiss or its denial of a motion for a summary judgment. Ex parte Liberty Nat'l Life Ins. Co., 825 So. 2d 758, 761-62 (Ala. 2002). Among the exceptions to this general rule is one that allows this Court to consider a petition for a writ of mandamus when the petitioner's motion asserts a lack of subject-matter jurisdiction in the trial court. Ex parte HealthSouth Corp., 974 So. 2d 288, 292 (Ala. 2007). Here, Scottsdale Insurance asserts a lack of subject-matter jurisdiction on the ground that Har-Mar Collision, Inc., the plaintiff below, does not have "standing" to file an action alleging breach of contract and bad faith because, according to Scottsdale Insurance, Har-Mar is not a party to the contract at issue.

1140631

It may be considered axiomatic, however, that a party who claims a private right of action against another has standing to assert its claim in our courts. The claim may fail for lack of support in the law or in the facts, including, in the case of a claim of breach of contract, a lack of proof of the existence of a contract between the plaintiff and the defendant. Such a failure, however, is a failure on the merits, not a failure of standing on the part of the plaintiff to assert its claim and to attempt to prove the claim. And the prospect of failure of a claim on such grounds certainly does not deprive the trial court of the subject-matter jurisdiction to decide whether a claim properly presented to it does in fact find support in the law and in the facts. Our precedents are now clear to this effect. See Ex parte BAC Home Loans Servicing, LP, [Ms. 1110373, Sept. 13, 2013] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2013) (overruling Cadle v. Shabani, 950 So. 2d 277 (Ala. 2006), and discussing at length the inapplicability of standing as a gatekeeping mechanism in private-law actions, as opposed to public-law actions); Ex parte Rhodes, 144 So. 3d 316, 318-19 (Ala. 2013); Whitty v. Montgomery Cnty., 141 So. 3d 1015, 1020-21 (Ala. 2013);

1140631

Ex parte MERSCORP, Inc., 141 So. 3d 984, 991-92 (Ala. 2013);  
Ex parte Kohlberg Kravis Roberts & Co., 78 So. 3d 959, 978-79  
(Ala. 2011); Steele v. Federal Nat'l Mortg. Ass'n, 69 So. 3d  
89, 91 n.2 (Ala. 2010); and Wyeth, Inc. v. Blue Cross & Blue  
Shield of Alabama, 42 So. 3d 1216, 1219-21 (Ala. 2010).