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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1170743

SMM Gulf Coast, LLC

v.

Dade Capital Corporation and David J. Fournier

1170771

Oliver Collier, Charles Deel, Pearl River Recycling, LLC,
and Recycling Centers, Inc.

v.

Dade Capital Corporation and David J. Fournier

Appeals from Mobile Circuit Court
(CV-13-903094)

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MITCHELL, Justice.

These consolidated appeals stem from an August 2012 transaction in which SMM Gulf Coast, LLC ("SMM"), purchased the assets of four salvage and recycling businesses in Alabama and Mississippi. After that transaction closed, Dade Capital Corporation ("Dade"), a creditor of one of the businesses whose assets were purchased by SMM, and Dade's president David J. Fournier, who owned stock in that same business, sued SMM, the four businesses that had sold their assets to SMM, and various individuals associated with those businesses in the Mobile Circuit Court alleging that Dade and Fournier should have received a greater share of the purchase price paid by SMM. Following a bifurcated trial, the trial court found that Dade and Fournier's claims were barred by a release agreement that Fournier executed in conjunction with the transaction and entered a judgment against them.

SMM, two of the businesses that had sold their assets to SMM, and two individuals with ownership interests in those businesses subsequently moved the trial court to award them attorney fees, court costs, and litigation expenses in accordance with a prevailing-party provision in the release

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agreement. The trial court denied their motions, and those parties appeal, arguing that the prevailing-party provision entitles them to the requested awards and that they have not waived their right to recover the requested amounts. We reverse and remand.

Facts and Procedural History

In approximately 2005, David Hickman, who at the time was an owner or part owner of several salvage and recycling businesses along the Mississippi Gulf Coast, began formulating plans to open David's Auto Shredding, Inc. ("DAS"), a similar business in Mobile. Hickman enlisted Dade, an Ohio firm with experience arranging financing and equipment deals for businesses in the salvage and recycling industry, to assist him in setting up DAS, and DAS ultimately executed two promissory notes in favor of Dade totaling \$1,350,000. In addition, DAS issued 800 shares of stock to Fournier, giving him an 8% ownership interest in the company.

In 2009, Hickman, DAS, and one of Hickman's Mississippi businesses, David Motor & Scrap, Inc. ("DM&S"), filed separate petitions for bankruptcy in the United States Bankruptcy Court for the Southern District of Alabama. Dade filed claims with

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the bankruptcy court, and, under the reorganization plans that were ultimately approved by that court, Dade was due to receive \$274,031 on its claims.

After those reorganization plans were approved, SMM contacted Hickman and expressed its interest in purchasing: 1) DAS; 2) DM&S; 3) Pearl River Recycling, LLC ("Pearl River"), a salvage and recycling business in Picayune, Mississippi, that Hickman co-owned with Charles Deel; and 4) Recycling Centers, Inc. ("RCI"), a salvage and recycling business in Pascagoula, Mississippi, that Hickman co-owned with Oliver Collier (these four businesses are hereinafter referred to collectively as "the selling companies"). On May 21, 2012, SMM entered into an asset-purchase agreement in which it agreed, upon closing of the asset purchase, to pay up to \$11,926,610 to purchase substantially all the assets of the selling companies, with much of that purchase price being used to satisfy the selling companies' creditors. An appendix to the asset-purchase agreement noted that Dade and Fournier claimed a debt owed them of \$1,300,000, but the asset-purchase agreement did not guarantee that they would receive any specific part of the purchase price.

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In early August 2012, Fournier was notified by Hickman that SMM objected to paying him and Dade the entire \$1,300,000 they were claiming. Fournier claims that he was told during his ensuing negotiations with the selling companies that SMM might complete its purchase of the selling companies' assets without his or Dade's consent and that they would then receive only what they were entitled to receive under the reorganization plans approved by the bankruptcy court. Ultimately, Fournier agreed to accept \$650,000, and, on August 16, 2012, Fournier executed a release agreement providing that he and Dade would not thereafter pursue any claims against SMM, the selling companies, Hickman, Deel, or Collier (hereinafter referred to collectively as "the released parties"):

"[Dade], on behalf of itself and its respective affiliates, officers, directors, managers, members, agents, consultants, employees, predecessors, attorneys, successors and assigns ..., hereby completely and forever releases and discharges each of [the released parties] ... from any claims (as defined below) which any of them may now have, has ever had or shall ever have against any of the released parties arising contemporaneously with or prior to the date of this release or on account of or arising out of any matter, cause or event related to [the selling companies], the sale of the assets to [SMM], the operation of [the selling companies], the business of [the selling companies], the

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governance of [the selling companies], any investments in, agreements with, or loans to, [one of the selling companies], and any other actions (or omissions) regarding [the selling companies], occurring contemporaneously with or prior to the date of this release."

The release agreement also contained a prevailing-party provision stating that, "[i]n any action to enforce the terms of [the release agreement], the prevailing party shall be entitled to recover its attorneys' fees and court costs and other non-reimbursable litigation expenses."

On August 20, 2012, SMM closed on its purchase of the selling companies' assets and, three days later, sent a \$650,000 payment to the law firm that had been representing Dade and Fournier. When Fournier was informed that the payment had been received, he instructed the law firm to withhold a retainer for "round two" before transmitting the balance of the funds to him.

On November 14, 2013, Dade and Fournier sued the released parties and various other individuals who had received some portion of the purchase price paid by SMM, alleging that they had conspired to suppress the details of the asset purchase from Dade and Fournier and that Dade and Fournier had accordingly been paid a smaller share of the purchase price

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than they were entitled to receive. Dade and Fournier specifically asserted claims of breach of fiduciary duty, fraud, conspiracy, negligence, breach of contract, conversion, and unjust enrichment. The trial court later dismissed the claims asserted against Hickman, DAS, and DM&S, as well as the claims asserted against several of the other individual defendants named by Dade and Fournier. Eventually, the trial court also entered judgment in favor of all the other individual defendants except Deel and Collier. (Because the only defendants before this Court in these appeals are SMM, Pearl River, RCI, Deel, and Collier, the remainder of our opinion addresses only the claims asserted against those parties (Pearl River, RCI, Deel, and Collier are hereinafter referred to collectively as "the appellant sellers").)

Dade and Fournier acknowledge in their brief submitted to this Court that, after they initiated this action, SMM and the appellant sellers filed answers and dispositive motions asserting that the release agreement (1) barred the claims asserted against them and (2) authorized them to recover the attorney fees, court costs, and litigation expenses they had incurred defending themselves from Dade and Fournier's claims.

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After those dispositive motions were all denied by the trial court, SMM filed a motion noting that it was undisputed that Dade and Fournier had not returned the \$650,000 they had received as consideration for executing the release agreement and asking the trial court to therefore conduct a bifurcated trial under Rule 42(b), Ala. R. Civ. P., "solely on the issue of whether it was impossible for [Dade and Fournier] to restore the consideration paid by SMM." SMM argued that if that issue was resolved against Dade and Fournier, it would obviate the need to consider the merits of their various claims, thus saving all parties involved time and money. See United States Cast Iron & Foundry Co. v. Marler, 17 Ala. App. 358, 360, 86 So. 103, 104 (1920) ("The Supreme Court of Alabama is firmly committed to the principle that, where money is paid as an inducement for signing a release, there can be no repudiation of the release without first tendering back the money as paid."); see also Taylor v. Dorough, 547 So. 2d 536, 541 (Ala. 1989) (recognizing that a party seeking to avoid a release is not required to return the consideration received if it would be impossible, impractical, or futile to do so).

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On March 1, 2017, the trial court granted SMM's motion for a bifurcated trial, defining the scope of the issues to be tried as broader than SMM had requested:

"The separate issues to be tried include the effect of the August 16, 2012, release on [Dade and Fournier's] claims, whether [Dade and Fournier] are bound by the release, whether the release was obtained by fraud or duress, and whether on any ground under Alabama law [Dade and Fournier] can avoid the release they executed though they have not returned the \$650,000 in consideration. The parties are directed to be prepared to present evidence bearing on their respective burdens of proof as outlined generally by [Alabama Pattern Jury Instructions] 11.43, 11.45, 11.47, 11.48, and/or 11.49. The parties are further directed to amend their pleadings, as may be necessary, no later than March 31, 2017, to add or confirm any defenses or affirmatives defenses that would be considered in the bifurcated bench trial."

None of the parties amended their pleadings, and the bifurcated trial was held as scheduled beginning on April 19. During the course of the trial, neither SMM nor the appellant sellers addressed any claim they might have under the prevailing-party provision of the release agreement, nor did they address those claims in the proposed orders they submitted to the trial court after the trial concluded.

On August 7, 2017, the trial court entered a final judgment in favor of SMM and the appellant sellers, holding

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that all of Dade and Fournier's claims were barred by the release agreement. The 30-day period during which any party could file a postjudgment motion under Rule 59, Ala. R. Civ. P., subsequently elapsed without any party requesting the trial court to alter, amend, or vacate its judgment.

On September 29, 2017, SMM moved the trial court to order Dade and Fournier to reimburse SMM for its attorney fees, court costs, and litigation expenses -- a total of \$427,822 -- in accordance with the terms of the prevailing-party provision in the release agreement. On October 6, 2017, the appellant sellers filed a similar motion requesting an award of \$71,053 in their favor. Both motions were supported by affidavits supporting the amounts of the reimbursement requests.

Dade and Fournier thereafter filed a response in which they did not dispute the validity or applicability of the prevailing-party provision but, instead, argued that the trial court lacked jurisdiction to consider the reimbursement requests because the time for filing postjudgment motions, as well as the time for filing an appeal of the trial court's judgment, had expired before those requests were made. Dade and Fournier argued that, because the trial court did not

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expressly retain jurisdiction over any future requests for attorney fees, court costs, and litigation expenses in its final judgment, the trial court was now required to strike both motions for reimbursement.

The parties submitted additional briefing on this issue and presented oral arguments in support of their respective positions. On April 2, 2018, the trial court entered an order denying the motions for reimbursement, explaining that SMM and the appellant sellers had waived their right to recover their attorney fees, court costs, and litigation expenses because (1) they failed to assert counterclaims encompassing their claims for reimbursement; (2) they did not ask the trial court to expressly retain jurisdiction over their reimbursement claims before the court lost jurisdiction over the case; (3) they did not file postjudgment motions raising their claims within the 30-day period allowed by Rule 59(e), Ala. R. Civ. P.; and (4) they did not address their claims for reimbursement at any point during the bifurcated trial. SMM and the appellant sellers thereafter filed separate notices of appeal to this Court.

Standard of Review

In Arnold v. Hyundai Motor Manufacturing Alabama, LLC, [Ms. 1170974, July 12, 2019] ___ So. 3d ___, ___ (Ala. 2019), this Court explained that the de novo standard of review applies to a trial court's grant or denial of a request for attorney fees and other amounts that a prevailing party is entitled to recover under a contract. The parties agree that questions about the trial court's jurisdiction or the proper interpretation of the Alabama Rules of Civil Procedure are also questions of law subject to de novo review by this Court. See, e.g., Ex parte Scott, 220 So. 3d 1042, 1050 (Ala. 2016) (explaining that "questions of jurisdiction" are subject to de novo review by this Court); Skinner v. Bevans, 116 So. 3d 1147, 1151 (Ala. Civ. App. 2012) ("An appellate court reviews de novo the trial court's interpretation of procedural rules" (citing United States v. Elmes, 532 F.3d 1138, 1141 (11th Cir. 2008))).

Analysis

SMM and the appellant sellers argue that none of the reasons offered by the trial court for denying their motions seeking the reimbursement of their attorney fees, court costs,

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and litigation expenses was a proper basis for denying those motions. Specifically, they argue (1) that a party seeking to recover under a prevailing-party provision is not required to assert a counterclaim stating their potential claim at the beginning of an action that will determine whether, in fact, that party will be the prevailing party; (2) that a trial court may award attorney fees, court costs, and litigation expenses that are owed under a prevailing-party provision after a final judgment has been entered even if the trial court did not expressly reserve jurisdiction to do so; (3) that postjudgment motions requesting attorney fees, court costs, and litigation expenses that the losing party is obligated to pay under a prevailing-party provision are not filed under Rule 59(e) and therefore do not have to be filed within the 30-day period allowed by Rule 59(e); and (4) that they did not waive their right to seek reimbursement for their attorney fees, court costs, and litigation expenses postjudgment by not addressing that issue during the bifurcated trial because the trial court defined the scope of the bifurcated trial to include only issues directly related

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to whether the release agreement barred Dade and Fournier from pursuing their claims. We consider these arguments in turn.

A. Compulsory Counterclaims under Rule 13(a), Ala. R. Civ. P.

In its order denying the motions for attorney fees, court costs, and litigation expenses filed by SMM and the appellant sellers, the trial court stated that their claims "for fees and expenses were not ancillary to the core case [but] arose out of the transaction or occurrence that was the subject matter of [Dade and Fournier's] claim." Citing Rule 13(a), Ala. R. Civ. P., the trial court therefore concluded that those claims "were compulsory counterclaims, requiring SMM and [the appellant] sellers to [assert them] to be tried in the April 2017 trial." Because they did not assert their claims for reimbursement as counterclaims, the trial court held that the doctrine of res judicata barred them from asserting those claims postjudgment. See Mississippi Valley Title Ins. Co. v. Hardy, 541 So. 2d 1057, 1059-60 (Ala. 1988) (explaining that the doctrine of res judicata bars a party from subsequently asserting a claim that should have previously been asserted as a compulsory counterclaim). SMM and the appellant sellers argue that the trial court's ruling is inconsistent with the

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plain language of Rule 13(a), which defines a compulsory counterclaim as:

"[A]ny claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."

(Emphasis added.) Highlighting the emphasized language, SMM and the appellant sellers argue that their reimbursement claims cannot be considered compulsory counterclaims because the reimbursement claims had not accrued and were not ripe at the time they served their answers. At that time, they argue, they held only potential claims that would not ripen unless and until the trial court entered a judgment deciding Dade and Fournier's claims in favor of SMM and the appellant sellers. See Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-581 (1985) (explaining that a claim is not ripe for adjudication if it rests upon contingent future events that may not occur). We agree.

In Brooks v. Peoples National Bank of Huntsville, 414 So. 2d 917, 920 (Ala. 1982), this Court explained that "the time for determining whether a counterclaim exists is at the time

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the counterclaimant must serve an answer. ... The pleader does not waive his right to assert a counterclaim which accrues after serving the pleading." SMM and the appellant sellers did not have a ripe claim against Dade and Fournier when they served their answers in early 2014 because the release agreement gave the right to recover attorney fees, court costs, and litigation expenses only to "the prevailing party" in an action enforcing the release agreement, and SMM and the appellant sellers had yet to prevail on Dade and Fournier's claims at that time. In fact, SMM and the appellant sellers did not become "prevailing part[ies]" under the terms of the release agreement until the trial court entered its August 2017 judgment over three years after they filed their early 2014 answers to Dade and Fournier's complaint. For that reason, SMM's and the appellant sellers' claims for attorney fees, court costs, and litigation expenses were not compulsory counterclaims that were waived when they were not asserted in the 2014 answers to Dade and Fournier's complaint. The trial court therefore erred by holding that those claims were barred by the doctrine of res judicata. See also Desroches v. Ryder Truck Rental, Inc., 429 So. 2d 1010,

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1012 (Ala. 1983) (explaining that a claim for attorney fees, costs, and expenses stemming from the breach of a release agreement was not a compulsory counterclaim under Rule 13(a) because, among other things, the claim was not "fixed in amount until the litigation in the first action was completed").

B. The Trial Court's Jurisdiction to Consider Postjudgment Requests for Attorney Fees, Court Costs, and Litigation Expenses

In its order denying the motions for reimbursement filed by SMM and the appellant sellers, the trial court also held that it lacked jurisdiction over those requests because its August 2017 order holding that Dade and Fournier's claims were barred by the release agreement was a final judgment. Therefore, the trial court reasoned, because it had not expressly stated that it was retaining jurisdiction to consider any future requests for attorney fees, court costs, or litigation expenses, it lost jurisdiction over the case 30 days after the judgment was entered. See Ex parte Caremark Rx, LLC, 229 So. 3d 751, 757 (Ala. 2017) ("If no Rule 59 motion is filed after a judgment is entered, the trial court that entered the judgment generally loses jurisdiction to

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amend the judgment 30 days after the judgment is entered."). SMM and the appellant sellers do not dispute that the August 2017 judgment was a final judgment, but they argue that their reimbursement claims based on the prevailing-party provision were collateral to that judgment and that the trial court therefore retained jurisdiction to address those claims without regard to whether it had expressly reserved jurisdiction to do so. We agree.

All the parties acknowledge that the trial court's August 2017 judgment was a final judgment that would have supported an appeal by Dade and Fournier. See State Bd. of Educ. v. Waldrop, 840 So. 2d 893, 899 (Ala. 2002) (recognizing that "a decision on the merits disposing of all claims is a final decision from which an appeal must be timely taken, whether a request for attorney fees remains for adjudication"); see also Ray Haluch Gravel Co. v. Central Pension Fund of Int'l Union of Operating Eng'rs, 571 U.S. 177, 184 (2014) (rejecting argument that unresolved claims for attorney fees authorized by contract are not collateral for finality purposes). This Court and the Court of Civil Appeals have both recognized that a trial court has jurisdiction to award attorney fees and

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costs after entering a final judgment because such requests are collateral to the merits. See, e.g., Complete Cash Holdings, LLC v. Powell, 239 So. 3d 550, 555 n.6 (Ala. 2017) (noting that the appellee's request for attorney fees and costs, which was ultimately granted, was still pending when the appellant filed its notice of appeal); Ford v. Jefferson Cty., 989 So. 2d 542, 545 (Ala. Civ. 2007) (affirming an award of attorney fees, costs, and expenses entered over five months after final judgment was entered). See also Dunlap v. Regions Fin. Corp., 983 So. 2d 374, 379 n.5 (Ala. 2007) (noting that "a majority of other jurisdictions have held that a trial court retains jurisdiction to award attorney fees after a notice of appeal has been filed"). It is thus clear that a trial court may grant a request for an award of attorney fees, court costs, and litigation expenses even after a final judgment has been entered. As explained below, there is an exception to this general rule for requests made under the Alabama Litigation Accountability Act ("the ALAA"), § 12-19-270 et seq., Ala. Code 1975, but that exception does not apply in this case.

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In explaining its holding that it lost jurisdiction to consider the reimbursement motions filed by SMM and the appellant sellers because it did not expressly reserve jurisdiction to do so in its August 2017 judgment, the trial court cited Gonzalez, LLC v. DiVincenti, 844 So. 2d 1196, 1202 (Ala. 2002), in which this Court concluded that the trial court's failure to expressly reserve jurisdiction to consider an attorney-fee award in its final judgment barred it from subsequently considering such a request. Importantly, however, the request for an award of attorney fees in Gonzalez was made under the ALAA. Section 12-19-272(a) of the ALAA provides that a court "shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs against any attorney or party" that initiates an action or asserts a claim or defense that the court determines "to be without substantial justification." (Emphasis added.) Based on this plain language, the Gonzalez Court explained that a trial court "'must make its award of attorney's fees under [the ALAA] as part of its judgment on the merits of the case.'" 844 So. 2d at 1201 (quoting Baker v. Williams Bros., 601 So. 2d 110, 112

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(Ala. Civ. App. 1992)). The Court nevertheless recognized that "'it is within the court's discretion to hold a separate hearing on an ALAA petition after the entry of final judgment on the merits, provided that the court retained jurisdiction to do so.'" Gonzalez, 844 So. 2d at 1201 (quoting Baker, 601 So. 2d at 112). See also Terminix Int'l Co., L.P. v. Scott, 142 So. 3d 512, 528 (Ala. 2013) ("The trial court does not have jurisdiction to rule upon an ALAA claim after it has entered a final judgment on the underlying claim unless it has specifically reserved jurisdiction to hear the ALAA claim."). Because Gonzalez involved a request for attorney fees under the ALAA -- not a contractual prevailing-party provision -- its holding that a trial court can award attorney fees only after a final judgment has been entered if the court has expressly retained jurisdiction to do so does not apply. Dade and Fournier's reliance on Gonzalez and other ALAA cases is misplaced.

C. Rule 59 and Postjudgment Motions Requesting Attorney Fees, Court Costs, and Litigation Expenses

The trial court did not expressly state that it was denying the requests for reimbursement filed by SMM and the appellant sellers because they failed to make those requests

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in the context of a Rule 59(e) motion asking the trial court to alter or amend its August 2017 final judgment. But in its order denying those requests, the trial court emphasized that SMM and the appellant sellers had failed to make their requests during the 30-day period in which Rule 59 motions are permitted, and the court concluded that if it were to grant their requests it would be ignoring "the letter and intent" of Rule 59. The trial court's order was wrong on this point. As Alabama courts have explained, a party making a postjudgment request for an award of attorney fees, court costs, and litigation expenses does not make that request under Rule 59.

In Russell v. State, 51 So. 3d 1026, 1027 (Ala. 2010), a property owner challenged the trial court's denial of his request for "litigation expenses" after the State's attempt to condemn a portion of his property using its eminent-domain powers failed.¹ After the trial court dismissed the State's

¹Section 18-1A-232(a), Ala. Code 1975, requires a trial court to award the defendant in an eminent-domain action "litigation expenses" if the action is "dismissed for any reason." Section 18-1A-3(12), Ala. Code 1975, defines "litigation expenses" to include "[t]he sum of the costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, necessary to prepare for anticipated or participation in actual probate or circuit court proceedings."

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action on August 20, 2008, the property owner moved the trial court to award him litigation expenses; on October 31, 2008, the trial court denied his motion. On November 24, 2008, the property owner moved the trial court to reconsider its denial of his request, but, on December 5, 2008, the trial court denied that motion as well. The property owner thereafter filed a notice of appeal on December 31, 2008, and it appears an issue subsequently arose concerning the timeliness of that notice of appeal.² If the property owner's initial request for an award of litigation expenses was considered a Rule 59(e) motion, the trial court's denial of that motion on October 31 started the 42-day period in which the property owner could appeal, and his notice of appeal was therefore due by December 12, 2008, thus making his December 31 notice of appeal untimely. Conversely, if the trial court's October 31 denial of the property owner's initial request was the "judgment" and his November 24 motion to reconsider was

²The specific date the property owner filed his notice of appeal is not stated in Russell, but SMM and the appellant sellers have cited Russell and "this Court may take judicial notice of its own records in another proceeding when a party refers to the proceeding." Kennedy v. Boles Invs., Inc., 53 So. 3d 60, 66 n.2 (Ala. 2010) (citing Butler v. Olshan, 280 Ala. 181, 187-88, 191 So. 2d 7, 13 (1966)).

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effectively a Rule 59(e) motion, then the trial court's denial of that motion on December 5 started the appeal clock and the December 31 notice of appeal was timely. The Russell Court ultimately agreed with the latter position and concluded that the property owner's appeal was timely:

"[The property owner's] motion for litigation expenses and attorney fees was not a motion to alter or amend a judgment pursuant to Rule 59(e), Ala. R. Civ. P. ... Therefore, [the property owner's] motion to 'reconsider' the denial of that request was not a successive postjudgment motion, and it tolled the 42-day period for filing an appeal. See, e.g., Ex parte Keith, 771 So. 2d 1018, 1022 (Ala. 1998) (noting that 'a successive postjudgment motion does not suspend the running of the time for filing a notice of appeal')."

51 So. 3d at 1028 n.4. See also Ford v. Jefferson Cty., 989 So. 2d 542, 545 (Ala. Civ. App. 2008) (concluding that a postjudgment request for attorney fees and costs was not subject to the 30-day time limitation of Rule 59(e) and observing that "the United States Supreme Court has held that a request for an award of attorney fees ... is not a 'motion to alter or amend a judgment'" (quoting White v. New Hampshire Dep't of Employment Sec., 455 U.S. 445, 452 (1982))). Although the basis of the postjudgment request for litigation expenses in Russell was a statute, the Russell Court

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recognized that such awards may be allowed by statute or by contract, 51 So. 3d at 1028, and Dade and Fournier have offered no compelling reason why we should treat requests based upon a statute differently from requests based upon a contract.

In sum, a party requesting attorney fees, court costs, and litigation expenses in accordance with a prevailing-party provision is not required to make that request within a motion invoking Rule 59(e), nor is such a party required to file that request within the 30-day postjudgment period set forth in Rule 59(e). The decisions of SMM and the appellant sellers to file their motions for reimbursement without regard to Rule 59 was therefore an insufficient basis for the trial court to deny those motions.

D. Lack of Argument and Evidence about the Prevailing-Party Provision during the Bifurcated Trial

Finally, the trial court held that "[a]ll matters related to the [release agreement], including claims for fees, were triable in the bifurcated bench trial" and that "SMM and the [appellant sellers] abandoned any claim[s] for fees which may have existed" by failing to address those claims during the bifurcated trial. SMM and the appellant sellers state,

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however, that the arguments they made and the evidence they presented during the bifurcated trial were consistent with the trial court's order defining the scope of that trial. Therefore, they argue that their inattention at trial to the prevailing-party provision did not constitute a waiver of their right to subsequently seek reimbursement based upon that provision.

Before considering the scope of the issues that were before the court during the bifurcated trial, we note that no party disputes that, at the very earliest stages of this litigation, SMM and the appellant sellers notified the trial court and Dade and Fournier of their position that the prevailing-party provision entitled them to recover the attorney fees, court costs, and litigation expenses they incurred defending this action if the action was ultimately resolved in their favor. The trial court, in fact, recognized that SMM and the appellant sellers had made this argument in both their motions for judgment on the pleadings and their later motions for a summary judgment. After those motions were denied, however, SMM moved the trial court to conduct a bifurcated trial "solely on the issue of whether it was

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impossible for [Dade and Fournier] to restore the consideration paid by SMM." The resolution of this issue, SMM argued, would obviate the need to expend time and resources on the merits of Dade and Fournier's claims.

On March 1, 2017, the trial court granted SMM's motion to bifurcate. In its order doing so, the trial court characterized the thrust of SMM's motion as follows: "SMM essentially seeks to bifurcate the trial of the issue of whether [Dade and Fournier] are bound by the terms of the [release agreement] -- that is, whether [Dade and Fournier] can avoid the terms of the release." The trial court went on to conclude that, because a bifurcated trial would be more expedient and promote the interests of justice, "the issues related to the effect of the release executed by or on behalf of [Dade and Fournier] on the claims asserted by [Dade and Fournier] shall be tried in a bifurcated trial." The trial court further specifically defined the issues to be tried as follows:

"The separate issues to be tried include the effect of the August 16, 2012, release on [Dade and Fournier's] claims, whether [Dade and Fournier] are bound by the release, whether the release was obtained by fraud or duress, and whether on any ground under Alabama law [Dade and Fournier] can

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avoid the release they executed though they have not returned the \$650,000 in consideration. The parties are directed to be prepared to present evidence bearing on their respective burdens of proof as outlined generally by [Alabama Pattern Jury Instructions] 11.43, 11.45, 11.47, 11.48, and/or 11.49. The parties are further directed to amend their pleadings, as may be necessary, no later than March 31, 2017, to add or confirm any defenses or affirmatives defenses that would be considered in the bifurcated bench trial."

Dade and Fournier state that the purpose of the bifurcated trial was therefore to determine the efficacy of the release agreement, which, they argue, had three primary elements: (1) the payment of \$650,000 to Dade; (2) Dade's release of SMM, the selling companies, Hickman, Deel, and Collier; and (3) the entitlement of the parties to the release agreement to attorney fees, court costs, and litigation expenses if there was a breach of that agreement. Thus, Dade and Fournier argue, any claim for attorney fees, court costs, and litigation expenses based on a breach of the release agreement was a triable issue in the bifurcated trial. We do not agree.

When SMM moved the trial court to conduct a bifurcated trial, it requested that the bifurcated trial be held to determine one single issue -- "whether it was impossible for

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[Dade and Fournier] to restore the consideration paid by SMM." That request clearly does not include the issue of whether SMM or the appellant sellers were entitled to recover the attorney fees, court costs, and litigation expenses they incurred defending themselves against Dade and Fournier's claims. Nevertheless, "Rule 42(b) [, Ala. R. Civ. P.,] gives the trial court a virtually unlimited freedom to order separate trials of claims, issues, or parties," Committee Comments on the 1973 Adoption of Rule 42, Ala. R. Civ. P., and a trial court's authority under Rule 42(b) is not limited by the parties' requests. See Colley v. Estate of Dees, 266 So. 3d 707, 716 (Ala. 2018) (explaining that a trial court has broad discretion under Rule 42(b) to schedule and manage trials). Thus, the trial court could have structured the bifurcated trial to include the issue of whether SMM and the appellant sellers were entitled to recover their attorney fees, court costs, and litigation expenses. It is apparent from the language of the trial court's order, however, that it did not.

The trial court initially stated in its order that "issues related to" the effect of the release agreement on the claims asserted by Dade and Fournier -- the primary issue --

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would be tried in the bifurcated trial. The effect of the prevailing-party provision is arguably such a related issue, but, in the next paragraph of its order, the trial court further defined the four specific issues to be tried: (1) the effect of the release agreement on Dade and Fournier's claims; (2) whether Dade and Fournier were bound by the release agreement; (3) whether the release agreement was obtained by fraud or duress; and (4) whether on any ground under Alabama law Dade and Fournier can avoid the release agreement even though they had not returned the \$650,000 they received in consideration for executing it. We cannot conclude that this delineation of the issues to be tried included the issue of whether SMM and the appellant sellers were entitled to recover their attorney fees, court costs, and litigation expenses, especially when, as SMM and the appellant sellers note, that delineation was immediately followed by an instruction notifying them "to be prepared to present evidence bearing on their respective burdens of proof as outlined generally by [Alabama Pattern Jury Instructions] 11.43, 11.45, 11.47, 11.48, and/or 11.49" -- which specifically address releases and the avoidance of releases but have no relevance to SMM and

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the appellant sellers' burden to establish any damages they might be entitled to receive under the prevailing-party provision. In light of the trial court's order, the decision by SMM and the appellant sellers not to present evidence of their potential claims under the prevailing-party provision should not be viewed as an abandonment of those claims, but as compliance with the terms of the trial court's order.

Conclusion

Following a bifurcated trial, the trial court found that the claims Dade and Fournier had asserted against SMM and the appellant sellers were barred by the terms of a release agreement. SMM and the appellant sellers then moved the trial court to award them their attorney fees, court costs, and litigation expenses in accordance with a prevailing-party provision in that release agreement, but the trial court denied their motions, holding that they had waived their right to recover those amounts because (1) they failed to assert counterclaims encompassing their claims for reimbursement; (2) they did not ask the trial court to retain jurisdiction over their reimbursement claims before the court lost jurisdiction over the case; (3) they did not file postjudgment motions

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raising their claims within the 30-day period allowed by Rule 59(e); and (4) they did not address their claims for reimbursement at any point during the bifurcated trial. As discussed above, none of the reasons set forth by the trial court was a proper basis for denying the reimbursement motions filed by SMM and the appellant sellers. The trial court's judgment is therefore reversed and the cause remanded for the trial court to consider the evidence submitted by SMM and the appellant sellers in conjunction with their motions for reimbursement and to enter an appropriate award based on that evidence.

1170743 -- REVERSED AND REMANDED.

1170771 -- REVERSED AND REMANDED.

Parker, C.J., and Bolin, Wise, Bryan, Mendheim, and Stewart, JJ., concur.

Sellers, J., dissents.