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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1180134

Kary Meadows

v.

Steven Shaver et al.

Appeal from Walker Circuit Court
(CV-15-900103)

PARKER, Chief Justice.

Kary Meadows was confined in a work-release program for eight months after his sentence ended. In an ensuing lawsuit, the Walker Circuit Court entered a summary judgment in favor of Court Referral Services 14th Judicial Circuit Community Punishment and Corrections

Authority, Inc., a/k/a Walker County Community Corrections ("WCCC"), and its director, Steven Shaver, and entered an order of dismissal in favor of Walker County circuit clerk Susan Odom. Meadows appeals. We affirm.

I. Facts and Procedural History

In 2009, Meadows pleaded guilty to theft, receiving stolen property, and possession of a controlled substance. He was sentenced to five years; that sentence was split and he was ordered to serve one year in the Walker County Community Work Release Program (operated by WCCC, a private company), followed by four years of supervised probation. In 2012, his probation was revoked, and he was placed under house arrest. In early May 2013, he was removed from house arrest for marijuana violations and placed back in the work-release program, where he was confined at night but released to work during the day.

For purposes of this appeal, the parties do not dispute that Meadows was supposed to be released from custody on May 27, 2013. According to Meadows, when that day arrived, Meadows asked to be released, but Shaver refused. Every day for the next eight months, Meadows asked to be released, insisting that his time had been served and asking to be

shown his time sheet. Shaver and his subordinates refused to release Meadows and refused to provide him any document showing when he was supposed to be released or to provide him his prisoner-identification number so he could find his release date for himself. Meadows asserts that Shaver threatened to have him charged with felony escape and placed in a maximum-security facility for 15 years if he ever failed to return to the facility after work, so Meadows continued to spend every night in custody for 8 months.

Meadows alleges that, in January 2014, he managed to contact a director within the Alabama Department of Corrections ("ADOC"). When Meadows asked for a copy of his time sheet, the ADOC director told him he should have been released in May 2013. Meadows said he was still in custody, and the director advised him to hire an attorney. Meadows quickly did so, and his attorney petitioned the circuit court for Meadows's release. On January 31, 2014, ADOC generated a time sheet showing that Meadows should have been released on May 27, 2013. Meadows was released on February 5, 2014.

In March 2015, Meadows sued Shaver and WCCC, asserting claims

of negligence and wantonness, negligence per se, false imprisonment, and money had and received (based on the fees and rent Meadows had paid to WCCC during the eight months he was improperly in custody). In June 2017, Shaver filed a motion for a summary judgment, asserting that he did not breach any duty to Meadows. Shaver submitted an affidavit explaining that he never received Meadows's end-of-sentence date from ADOC. Shaver also averred that the person responsible for sending ADOC Meadows's sentence-status transcript -- which would have triggered ADOC's calculation of his end-of-sentence date -- was the county's circuit clerk, Susan Odom. Shaver contended that he was not responsible for calculating the end-of-sentence date, nor was he capable of doing so. WCCC likewise moved for a summary judgment, incorporating by reference Shaver's arguments.

Two weeks after the motions for a summary judgment were filed, Meadows amended his complaint to substitute Odom for a fictitiously named defendant, asserting claims against her of negligence, wantonness, and false imprisonment, in her official and individual capacities. Odom filed a motion to dismiss, arguing that she was entitled to State immunity,

judicial immunity, and federal qualified immunity and that Meadows's claims were barred by the applicable statute of limitations. Shaver renewed his motion for a summary judgment. In response to Odom's motion to dismiss, Meadows again amended his complaint, this time to clarify that his official-capacity claims against Odom sought payment only from insurance maintained by or on behalf of Odom, not from the State treasury.

After a hearing, the circuit court entered an order granting Odom's motion to dismiss and dismissing her from the case, ruling that she was entitled to State immunity and judicial immunity and that her statutory duty to send ADOC a sentence-status transcript for Meadows had not been triggered by the 2012 order in his criminal case.

Later, the court entered a summary judgment in favor of Shaver and WCCC, ruling that they did not have a duty to calculate Meadows's release date. Meadows moved to vacate the summary judgment under Rule 59, Ala. R. Civ. P., and requested a hearing. The court denied the motion without a hearing, and Meadows appeals.

II. Standard of Review

Both the judgment of dismissal in favor of Odom and the summary judgment in favor of Shaver and WCCC must be reviewed as summary judgments. Although Odom's motion was styled a motion to dismiss, the circuit court treated it as a motion for a summary judgment by relying on facts outside Meadows's complaint. "[W]here, as here, the parties ... file matters outside the pleadings and these matters are not excluded by the court," a motion to dismiss is converted to a motion for a summary judgment. Graveman v. Wind Drift Owners' Ass'n, Inc., 607 So. 2d 199, 202 (Ala. 1992). Moreover, when both sides submit or refer to evidence outside the complaint, they consent to the conversion, and the court is not required to notify them of it. See Lifestar Response of Alabama, Inc. v. Admiral Ins. Co., 17 So. 3d 200, 213 (Ala. 2009) ("[I]t appears that both sides acquiesced in the trial court's consideration of matters outside the pleadings either by submitting or by referring to evidence beyond the pleadings; therefore, notice by the trial court that it would consider matters outside the pleadings would not have been necessary under Rule 56, Ala. R. Civ. P."). Here, when Odom filed her motion to dismiss, she

submitted documents outside the complaint. In Meadows's response, he likewise relied on documents outside the complaint. Thus, the parties acquiesced to the court's treating Odom's motion as one for a summary judgment without further notice.

"In reviewing the disposition of a motion for summary judgment, we utilize the same standard as the trial court in determining whether the evidence ... made out a genuine issue of material fact and whether the defendant was entitled to a judgment as a matter of law." Gable v. Shoney's, Inc., 663 So. 2d 928, 928 (Ala. 1995). The evidence is considered in the light most favorable to the nonmovant, and all doubts are resolved against the movant. Hanners v. Balfour Guthrie, Inc., 564 So. 2d 412, 413 (Ala. 1990).

III. Analysis

A. Claims against Odom

In filings relating to Odom's motion to dismiss, she argued that Meadows's claims against her, in her official and individual capacities, were barred by State immunity, judicial immunity, federal qualified immunity, and the statute of limitations. Because the State-immunity

defense is dispositive, we address only that defense.

The Alabama Constitution provides: "[T]he State of Alabama shall never be made a defendant in any court of law or equity." Art. I, § 14, Ala. Const. 1901. This immunity applies to claims for damages against not only the State and its agencies, but also State officers and employees who are sued in their official capacities (i.e., when the claim is, in effect, against the State). See Ex parte Moulton, 116 So. 3d 1119, 1130-31, 1140 (Ala. 2013); Ex parte Butts, 775 So. 2d 173, 177 (Ala. 2000). Although circuit clerks like Odom are elected by their counties' residents, they are officers of the State. For example, their salaries are primarily paid by the State. § 12-17-92, Ala. Code 1975. Further, State statutes, rather than county ordinances, establish the locations of circuit clerks' offices, § 12-17-90, Ala. Code 1975, the scope of their duties, § 12-17-94, and the extent of their authority, § 12-17-93. Therefore, as a State officer, Odom was entitled to State immunity from any claims by Meadows that were against her in her official capacity.

This Court addressed the nature of official-capacity claims versus individual-capacity claims in Barnhart v. Ingalls, 275 So. 3d 1112 (Ala.

2018). There, former State employees sued State officers, alleging that the officers had failed to pay the employees bonuses and holiday compensation as required by law. The employees sought damages from the officers, purportedly in their individual capacities. This Court held that those claims were barred by State immunity. We explained that State officers and employees are immune from a damages claim that is, "in effect, one against the State." Id. at 1122. We recognized that our prior cases, when determining whether a claim was, "in effect, one against the State," had focused only on whether the source of any damages awarded would be the State treasury. However, we emphasized another factor relevant to that determination: "the nature of the action." Id. at 1125-26. Although we had mentioned that factor in other cases, see id. at 1125 (quoting Haley v. Barbour Cnty., 885 So. 2d 783, 788 (Ala. 2004), quoting in turn Phillips v. Thomas, 555 So. 2d 81, 83 (Ala. 1989)), we apparently had not previously distinguished that factor from, or recognized that it had any significance independent of, the source-of-damages factor. In Barnhart, we did so. To determine "the nature of the action," we examined whether the duties that the officers allegedly

breached existed solely because of their official positions. Because the answer was yes, we held that the claims were not truly individual-capacity claims but were actually official-capacity claims -- claims, in effect, against the State. Id. at 1126 ("[T]he ... officers were, accordingly, acting only in their official capacities when they allegedly breached those duties .... Stated another way, the ... officers had no duties in their individual capacities to give effect to the [wages laws]; rather, any duties they had in that regard existed solely because of their official positions in which they acted for the State. Accordingly, the individual-capacities claims are, in effect, claims against the State ...." (citation omitted)). And, as official-capacity claims for damages, they were barred. Finally, we expressly overruled all prior cases that had focused solely on the source-of-damages factor in determining whether State immunity applied. Id. at 1127.

We recently applied Barnhart's official-duty test in Anthony v. Datcher, [Ms. 1190164, Sept. 4, 2020] ___ So. 3d ___ (Ala. 2020). There, college instructors sued a State educational official for damages resulting from the official's misclassification of their positions for salary purposes.

The instructors' relevant claims were purportedly against the official in her individual capacity. In light of Barnhart, this Court identified "[t]he key issue [as] whether those ... claims against [the official] were actually individual-capacity claims or were in fact official-capacity claims mislabeled as individual-capacity claims." Id. at ___. We noted that, under Barnhart, "the nature of a claim is crucial in determining whether it is actually an official-capacity claim or an individual-capacity claim." Id. at ___. Therefore, we examined the allegedly breached duty of the official -- to properly classify the instructors -- and determined that that duty "existed only because of her official position in which she acted for the State." Id. at ___. Accordingly, we held that the claims "were not actually individual-capacity claims" but were in substance official-capacity claims. Id. at ___.

Following Barnhart and Anthony, we must examine whether the duties that Odom allegedly breached existed solely because of her State position. Meadows's operative complaint alleged that Odom breached the following duties:

- "to properly document [Meadows's] release date";

- "to notify ... [ADOC] ... of Meadows's situation";
- "to provide appropriate action based on Meadows's known release date and other records";
- "to ensure [ADOC] receive[d] the necessary [sentence-status] transcript[] ... within five business days of [Odom's] receipt of the court order" as allegedly required by statute; and
- "to train and supervise her staff ... [to] send[,] and ensure ADOC received[,] the transcript."

In the context of the facts presented by Meadows, each of these alleged duties relating to the sentence-status transcript arose solely out of Odom's position as circuit clerk. That is, each alleged duty existed only because of Odom's State position. Accordingly, both Meadows's official-capacity claims and his purported individual-capacity claims against Odom were, in effect, against the State; they were, in substance, official-capacity claims. Under Barnhart and Anthony, then, these claims were barred by State immunity.

We recognize that, in disputing whether State immunity applies, the parties have focused on the source-of-damages factor that was applied in

prior cases and that was mentioned in Barnhart; Odom has not asserted State immunity based on Barnhart's official-duty test. Nevertheless, we have held that State immunity is an issue of subject-matter jurisdiction, such that we must recognize its applicability even if no party raises it. Barnhart, 275 So. 3d at 1127 n.9; see Alabama Dep't of Corr. v. Montgomery Cnty. Comm'n, 11 So. 3d 189, 191-92 (Ala. 2008). Hence, we are bound to raise and apply Barnhart's test ex mero motu, as we have done here.[1]

B. Claims against Shaver and WCCC

Meadows argues that the circuit court erred by entering the summary judgment in favor of Shaver and WCCC because, he asserts, both Shaver's renewed motion for a summary judgment and WCCC's motion for a summary judgment were mooted by Meadows's subsequently filed third amended complaint and because Shaver's renewed motion contained no argument regarding Meadows's claims of false imprisonment

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[1]The applicability of State immunity resulting from Barnhart's official-duty test makes any discussion of Odom's judicial-immunity and federal-qualified-immunity theories unnecessary. Similarly, we pretermit discussion of Odom's statute-of-limitations argument.

and money had and received. Regarding WCCC's motion for a summary judgment, Meadows argues that the circuit court erred in granting it because the motion simply incorporated Shaver's motion by reference and failed to comply with the requirements in Rule 56(c), Ala. R. Civ. P., that a motion for a summary judgment include a statement of facts, legal argument, and supporting evidence. Meadows also argues that the circuit court erred by denying his Rule 59 motion to vacate without holding the hearing required by Rule 59(g).

This Court ordinarily cannot reverse a summary judgment on the basis of an argument that reasonably could have been, but was not, presented to the trial court before that court entered the summary judgment. See Ex parte Ryals, 773 So. 2d 1011, 1013 (Ala. 2000); Ex parte Smith, 901 So. 2d 691, 695 (Ala. 2004). The record reflects that 11 months passed after Shaver and WCCC filed their motions for a summary judgment and that a hearing on the motions was held before the circuit court entered the summary judgment. However, the record does not reflect that, during that time, Meadows raised any of the arguments that he now raises on appeal.

As to the judgment on Meadows's claims of false imprisonment and money had and received, if Shaver and WCCC had not asked for a summary judgment on those claims, Meadows might be able to argue that he was unfairly surprised and thus had no reason, before judgment was entered, to oppose a summary judgment as to those claims. But, although Shaver and WCCC did not present legal argument directed to those claims, their motions did request a summary judgment on all of Meadows's claims. Thus, before entry of the judgment, Meadows was on notice of the need to present argument opposing summary judgment as to all of his claims, even if, as to the false-imprisonment and money-had claims, that argument could simply have been that Shaver and WCCC had not presented argument to support a summary judgment.[2]

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[2]Meadows argues that he was not required to point out to the circuit court certain deficiencies in the motions for a summary judgment because, he asserts, those deficiencies caused the motions to fail to meet the movants' summary-judgment burden under Rule 56(c). Meadows relies on White Sands Group, L.L.C. v. PRS II, LLC, 32 So. 3d 5 (Ala. 2009). In that case, this Court held:

> "'"'[T]he party moving for summary judgment has the burden to show that he is entitled to judgment under established principles;

> and if he does not discharge that burden, then he is not entitled to judgment. No [response] to an insufficient showing is required.' " Otherwise stated, "[a] motion that does not comply with Rule 56(c) does not require a response ... from the nonmovant," and a judgment may not be entered on such a motion even in the absence of a response from the nonmovant.'
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> "Jones-Lowe Co.[v. Southern Land & Expl. Co.], 18 So. 3d [362,] 367 [(Ala. 2009)].
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> "... [The movants] have not ... met their initial burden by reliance on the filings of [a co-party]. For these reasons, the burden never shifted to [the nonmovant] to oppose the motion filed by [the movants]."

Id. at 21 (some citations and some emphasis omitted; emphasis added). However, White Sands did not hold that a nonmovant is not required to make any objection to an insufficient summary-judgment motion and may stand mute, holding his objections in reserve for a later Rule 59 motion or an appeal in the event that the motion is granted. Rather, our language in White Sands about the non-necessity of the nonmovant filing a "response" to or "oppos[ing]" the motion must be understood in its jurisprudential context. Earlier in that opinion, we explained the summary-judgment burden-shifting procedure thus: " ' "If the movant meets [its] burden of production by making a prima facie showing that [it] is entitled to a summary judgment, 'then the burden shifts to the nonmovant to rebut the prima facie showing of the movant.' " ' " Id. at 10 (quoting Denmark v. Mercantile Stores Co., 844 So. 2d 1189, 1195 (Ala. 2002), quoting other cases) (emphasis added). By "rebut," we of course meant that the nonmovant must submit summary-judgment evidence, as required by Rule 56(e):

Moreover, although Meadows raised some of his current arguments in his Rule 59 motion, a trial court has discretion not to consider new arguments in a Rule 59 motion that reasonably could have been raised

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> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against him."

Rule 56(e), Ala. R. Civ. P. (emphasis added). Thus, the "response" referred to in Rule 56(e) and White Sands is the rebuttal of a movant's prima facie showing by the nonmovant's submission of summary-judgment evidence. As White Sands and similar cases make clear, no such rebuttal is required when there is nothing to rebut. But that principle does not relieve the nonmovant of the responsibility of bringing to the trial court's attention procedural deficiencies in the summary-judgment motion, if the nonmovant wishes to later raise those deficiencies in a Rule 59 motion or on appeal. See Ryals, 773 So. 2d at 1013; Smith, 901 So. 2d at 695. Indeed, procedural deficiencies ordinarily can be waived, and nothing in White Sands indicates that such deficiencies in a motion for a summary judgment must be treated differently. Further, Meadows's interpretation of White Sands would require trial courts to scour every defendant's summary-judgment motion for procedural compliance with every part of Rule 56 and for the presence of argument as to every one of the plaintiff's claims. To require a court to do so would not only burden the court with the plaintiff's work, but would also force the court into a position of advocate for the plaintiff, removing the court from the proper judicial role of neutral arbiter.

before the judgment was entered, see Alfa Mut. Ins. Co. v. Culverhouse, 149 So. 3d 1072, 1078 (Ala. 2014). Here, the circuit court denied the motion, and there is no indication that the court considered Meadows's new arguments; we will not presume that it did. See Espinoza v. Rudolph, 46 So. 3d 403, 416 (Ala. 2010) ("There is no indication that the trial court considered the merits of the legal argument raised for the first time in [the appellants'] postjudgment motion, and we will not presume that it did."). Thus, the motion did not preserve the new arguments. Therefore, Meadows's appellate arguments directed to the summary judgment were not preserved for appeal.

Regarding Meadows's argument that his third amended complaint mooted the then pending motions for a summary judgment,[3] we also take this opportunity to clarify a point of civil procedure. In Ex parte Puccio, 923 So. 2d 1069 (Ala. 2005), this Court held that a motion to dismiss was

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[3]WCCC's summary-judgment motion incorporated by reference Shaver's original summary-judgment motion. When Shaver filed his renewed summary-judgment motion, WCCC did not file a parallel renewal. However, Meadows does not argue that WCCC's incorporation of Shaver's original motion was mooted by Shaver's renewed motion, so we need not address that possibility.

mooted by a later amended complaint because the amended complaint superseded the original complaint. The defendant had moved to dismiss the action based on the trial court's lack of personal jurisdiction. The plaintiff amended the complaint to address the personal-jurisdiction issue. We held that that amendment (which was clearly relevant to the pending dispositive motion) mooted the motion. It does not follow, however, that an unrelated amendment of a complaint likewise moots a pending motion. Here, Meadows's amendment of the complaint revised only the claims against Odom, not those against Shaver and WCCC that were the subject of their pending motions for a summary judgment. This kind of amendment does not necessarily render a prior summary-judgment motion moot; instead, as other states' courts have held, the motion continues to apply to claims and allegations that are carried over into the amended complaint. See Malone v. E.I. DuPont de Nemours & Co., 8 S.W.3d 710, 714 (Tex. App. 1999) ("In summary judgment cases, if an amended pleading raises new theories of recovery that are not addressed in the motion for summary judgment, it is improper to grant summary

judgment on the entire case. ... But a trial court can grant partial summary judgment on the claims that were addressed in the summary judgment motion and carried forward in the amended pleading without requiring the summary judgment motion to be amended."); Singer v. Fairborn, 73 Ohio App. 3d 809, 813, 598 N.E.2d 806, 809 (1991) ("There is no affirmative duty upon the moving party to renew its motion for summary judgment ..., at least in the absence of any amendment to the complaint that would affect the issues raised in the motion for summary judgment."); cf. 6 Charles Alan Wright et al., Federal Practice and Procedure § 1476 (3d ed. 2010) ("[D]efendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending. If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading. To hold otherwise would be to exalt form over substance." (footnote omitted)). Indeed, to allow plaintiffs to avoid a summary judgment by changing unrelated details in their complaints could permit plaintiffs to thwart the summary-judgment procedure entirely. Accordingly, an amendment of a

pleading moots an opponent's pending motion only to the extent that the substance of the amendment moots the substance of the motion.[4] In light of this clarification, Meadows's subsequent amendment of his complaint did not moot Shaver and WCCC's pending motions for a summary judgment.[5]

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[4]Our decision in Grayson v. Hanson, 843 So. 2d 146 (Ala. 2002), is not to the contrary. There, the plaintiff appealed from a final judgment quieting title and challenged the trial court's denial of an earlier summary-judgment motion that had argued adverse possession of the property. This Court declined to review that denial because, after it, the plaintiff had amended his complaint, changing the legal description of the disputed property. However, among other procedural differences from this case, in Grayson the amendment to the complaint, like the amendment in Puccio, affected the ground raised in the earlier summary-judgment motion.

[5]The hearing at which the summary-judgment motions were apparently heard (we have not been favored with a transcript) was scheduled via an order setting a hearing on "any pending motions." Presumably, Meadows did not raise his arguments in opposition to the summary-judgment motions at that hearing because he believed that the motions were no longer "pending" as a result of having been mooted by the third amended complaint. But the motions were not moot, as we have explained. Moreover, for preservation purposes, it was incumbent on Meadows to bring the mootness issue to the circuit court's attention at or before the hearing, along with all other arguments he wished to assert in opposition to a summary judgment. Even if he had been correct about mootness, he could not simply pocket his arguments, to be later raised for the first time in a Rule 59 motion or on appeal.

Finally, Meadows argues that the circuit court erred by denying his Rule 59 motion to vacate the summary judgment without providing him a hearing on that motion. A Rule 59 motion "shall not be ruled upon until the parties have had opportunity to be heard thereon." Rule 59(g). Thus, " '[a] trial court's failure to conduct a hearing is error.' " Honea v. Raymond James Fin. Servs., Inc., 240 So. 3d 550, 564 (Ala. 2017) (quoting Dubose v. Dubose, 964 So. 2d 42, 46 (Ala. Civ. App. 2007)). However, if in a particular case the failure to hold a hearing is harmless error, this Court will not reverse the denial of the Rule 59 motion. See Ex parte Evans, 875 So. 2d 297, 299–300 (Ala. 2003). Harmless error is error that does not "injuriously affect[] [the appellant's] substantial rights," Rule 45, Ala. R. App. P. In the context of a denial of a Rule 59 motion without a hearing, "[h]armless error occurs ... where there is either no probable merit in the grounds asserted in the motion, or where the appellate court resolves the issues presented therein, as a matter of law, adversely to the movant ...." Greene v. Thompson, 554 So. 2d 376, 381 (Ala. 1989). Here, Meadows's Rule 59 motion presented only new arguments and new evidence that could reasonably have been presented before the summary judgment was

entered. The circuit court thus had discretion to disregard those arguments, see Alfa, supra, and that evidence, see Moore v. Glover, 501 So. 2d 1187, 1189 (Ala. 1986); Green Tree Acceptance, Inc. v. Blalock, 525 So. 2d 1366, 1369 (Ala. 1988). Therefore, under the circumstances of this case, the court's failure to hold a hearing on Meadows's Rule 59 motion did not affect Meadows's substantial rights, and thus any error was harmless.

IV. Conclusion

Meadows's claims against Odom, which were all ultimately official-capacity claims, are barred by the doctrine of State immunity. Regarding his claims against Shaver and WCCC, Meadows's appellate arguments were not preserved below. Therefore, we affirm the circuit court's summary judgments as to all claims against Odom, Shaver, and WCCC.

AFFIRMED.

Mitchell, J., concurs.

Bolin, Shaw, Wise, Bryan, Sellers, and Mendheim, JJ., concur in the result.

Stewart, J., recuses herself.