

REL: September 4, 2020

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

---

1180596

---

Ex parte Gulf Health Hospitals, Inc., d/b/a Thomas Hospital

PETITION FOR WRIT OF MANDAMUS

(In re: Larry D. Faison, as personal representative of the  
Estate of Deborah Faison, deceased

v.

Gulf Health Hospitals, Inc., d/b/a Thomas Hospital; Baldwin  
Emergency Physicians, PC; Bay Area Inpatient Physicians,  
LLC; and Crisis Hospitalist Staffing Solutions, LLC)

(Baldwin Circuit Court, CV-17-900995)

MITCHELL, Justice.

1180596

Deborah Faison ("Deborah") died from cardiac arrest while she was a patient at Thomas Hospital in Fairhope. Her husband Larry D. Faison ("Faison") then sued Gulf Health Hospitals, Inc. ("Gulf Health"), which owned and operated the hospital. Over a year after filing suit, Faison was allowed to amend his complaint by making additional factual allegations to support his claims. Gulf Health now petitions this Court for a writ of mandamus directing the trial court to strike the amended complaint. We deny the petition.

#### Facts and Procedural History

On September 4, 2015, Deborah sought treatment at an urgent-care center for symptoms that she believed were related to a urinary-tract infection. A physician there confirmed that Deborah's fever and low blood pressure were related to a urinary-tract infection and encouraged her to consult with her primary physician in the next few days or to go to the emergency room if her symptoms worsened.

When Deborah began feeling worse later that night, she went to the emergency department of Thomas Hospital. She was admitted to the hospital in the early morning hours of September 5, 2015. In an effort to treat Deborah's low blood

1180596

pressure, she was given intravenous doses of Levophed, a medication similar to adrenaline that causes the blood vessels to contract and blood pressure to rise. At 6:10 p.m., the Levophed drip was discontinued because Deborah's blood pressure had stabilized at an acceptable level. Her overall condition, however, did not improve.

There is no indication that Deborah's blood pressure became dangerously low again, but sometime between 10:40 p.m. and 11:00 p.m. she was given another dose of Levophed. At approximately 11:00 p.m., Deborah went into cardiac arrest. At approximately 11:10 p.m., in the process of reviving Deborah, hospital staff gave her more Levophed, and her condition stabilized for a short period. Soon after, however, Deborah went into cardiac arrest again, and, at 12:15 a.m. on September 6, 2015, she was pronounced dead.

On August 25, 2017, Faison, as the personal representative of Deborah's estate, sued Gulf Health and other parties that had delivered health-care services to Deborah before her death, alleging that they had committed dozens of negligent acts that proximately caused her death. Faison's complaint specifically noted that Levophed had first been

1180596

ordered for Deborah at 5:40 a.m. before being discontinued at 6:10 p.m. and then later "restarted" at 11:10 p.m. after Deborah went into cardiac arrest. Faison's complaint did not address the administration of Levophed between 10:40 p.m. and 11:00 p.m., but it generally alleged that Gulf Health had negligently stopped administering Levophed. Faison's case was eventually set for a September 2018 trial before being postponed.

In September 2018, Faison began taking the depositions of the health-care workers who had treated Deborah during her hospitalization; by the end of October 2018, Faison had deposed four nurses and two physicians. During some of those depositions, Faison asked witnesses why Deborah was given Levophed between 10:40 p.m. and 11:00 p.m. when her blood pressure was, by all accounts, at an appropriate level. The physician at Thomas Hospital who treated Deborah when she was initially admitted testified that, given Deborah's vital signs at that time, there was not a medical reason to administer Levophed during that time and that it could have been dangerous to do so. Another physician who treated Deborah

1180596

during her hospital stay likewise acknowledged that he did not know why Levophed was given at that time.

On November 13, 2018, Faison filed an amended complaint in which he alleged that Deborah had been given Levophed sometime in the 20-minute period before she first went into cardiac arrest and that the medication was not needed based on her blood pressure at the time. Faison asserted that this negligent administration of Levophed constituted an additional breach of the standard of care.<sup>1</sup>

On November 20, 2018, Gulf Health moved the trial court to strike Faison's amended complaint for failing to comply with Rule 15(a), Ala. R. Civ. P., which provides:

"Unless a court has ordered otherwise, a party may amend a pleading without leave of court, but subject to disallowance on the court's own motion or a motion to strike of an adverse party, at any time more than forty-two (42) days before the first setting of the case for trial, and such amendment shall be freely allowed when justice so requires. Thereafter, a party may amend a pleading only by

---

<sup>1</sup>Faison's amended complaint also alleged for the first time that Deborah's endotracheal tube had not been correctly inserted. Gulf Health argues that Faison should not have been permitted to amend his complaint to make this allegation. In his response to Gulf Health's mandamus petition, Faison states that he intends to dismiss any claim based on the alleged negligent insertion of the endotracheal tube; therefore, we do not discuss that allegation further.

1180596

leave of court, and leave shall be given only upon a showing of good cause."

Gulf Health specifically argued that Faison's amended complaint should be struck because (1) Faison failed to seek the trial court's permission before filing the amended complaint even though the first trial setting had passed and (2) the additional facts alleged by Faison were available to him when he filed his original complaint, leaving him without good cause for asserting a claim based on those facts after the statute of limitations had expired.

Following a hearing, the trial court denied Gulf Health's motion to strike. Gulf Health now petitions this Court for mandamus relief, arguing that the trial court exceeded its discretion by permitting Faison to amend his complaint to assert the allegation that Levophed was negligently administered to Deborah in the 20-minute period before she first went into cardiac arrest.

#### Standard of Review

"A writ of mandamus is an extraordinary remedy, and is appropriate when the petitioner can show (1) a clear legal right 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) the properly invoked jurisdiction of the court. Ex parte

1180596

Inverness Constr. Co., 775 So. 2d 153, 156 (Ala. 2000)."

Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001).

"The petitioner bears the burden of proving all four of these elements before a writ of mandamus will issue.'" Tatum v. Freeman, 893 So. 2d 1213, 1218 (Ala. Civ. App. 2004) (quoting trial court's order) (emphasis added).

#### Analysis

In a recent decision, Ex parte State Farm Fire & Casualty Co., [Ms. 1180451, April 24, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2020), this Court emphasized that a party seeking mandamus relief must adequately address the third element of the mandamus test -- whether the party lacks "another adequate remedy." Parties often try to satisfy this element by citing caselaw in which this Court has determined that the issue being raised by the party is recognized for interlocutory appellate review. Although that may be sufficient in those cases in which it is well established that the issue being raised is appropriate for mandamus review (e.g., immunity), it is not sufficient here, where Gulf Health is challenging the trial court's ruling on a motion to amend a complaint. More is needed.

1180596

To support its argument that mandamus review is appropriate, Gulf Health quotes the following passage from Ex parte Alfa Mutual Insurance Co., 212 So. 3d 915, 921 (Ala. 2016), in which this Court issued a writ of mandamus directing the trial court to strike an amended complaint that the trial court had allowed:

"A writ of mandamus is an extraordinary remedy, and it will be "issued only when 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 United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue to compel the exercise of a trial court's discretion, but it will not issue to control or to review a court's exercise of its discretion unless an abuse of discretion is shown. Ex parte Auto-Owners Ins. Co., 548 So. 2d 1029 (Ala. 1989). If the remedy by way of appeal is adequate, as is usually the case with rulings allowing or disallowing amendments, we will decline to grant the writ; in those cases in which an appeal does not provide an adequate remedy, we will issue the writ. Ex parte Miller, 292 Ala. 554, 297 So. 2d 802, 805 (1974). See, also, Huskey v. W.B. Goodwyn Co., 295 Ala. 1, 321 So. 2d 645 (1975).'

"Ex parte Yarbrough, 788 So. 2d 128, 132 (Ala. 2000). 'A writ of mandamus ... will issue to

1180596

correct a trial court's ruling regarding the amendment of pleadings ... when it is shown that the trial court has exceeded its discretion.' Ex parte Liberty Nat'l Life Ins. Co., 858 So. 2d 950, 952 (Ala. 2003) (citing Rector v. Better Houses, Inc., 820 So. 2d 75 (Ala. 2001))."

212 So. 3d at 918 (emphasis added).

Gulf Health cites this passage for the principle that mandamus review is available to a party seeking immediate appellate review of a trial court's decision granting or denying a plaintiff's motion to amend his or her complaint. But Alfa does not go as far as Gulf Health would like. Alfa provides only that mandamus review may be available to a party aggrieved by a trial court's ruling on a motion to amend a complaint. Indeed, the Alfa Court expressly recognized that an appeal is "usually" an adequate remedy for a party in Gulf Health's position; thus, it follows that mandamus review is generally not available to such a party. See also Ex parte Miller, 292 Ala. 554, 557-58, 297 So. 2d 802, 805 (1974) ("It is not to be assumed or understood, however, that mandamus will be allowed as a method of reviewing all rulings denying the right to amend a complaint or other pleading. In accord with the weight of authority and sound reasoning, it may well

1180596

be that review of the great majority of rulings allowing or disallowing amendments will be only by appeal.").

Because mandamus review of a trial court's ruling on a plaintiff's motion to amend his or her complaint is the exception, not the rule, it is incumbent upon a party seeking mandamus review of such a ruling to explain why an ordinary postjudgment appeal would not be adequate. Gulf Health has not done so here; rather, it has stated in conclusory fashion that it "does not have an adequate remedy by appeal." Petition at 9. This bare statement by Gulf Health is insufficient to meet its burden. See State Farm, \_\_\_ So. 3d at \_\_\_ (explaining that a petitioner seeking mandamus relief bears the burden of establishing that it lacks another adequate remedy).<sup>2</sup>

This case is reminiscent of State Farm, in which a petitioner sought mandamus review of a trial court's denial of

---

<sup>2</sup>We recognize that Alfa did not expressly state why an appeal was an inadequate remedy for the petitioner in that case. Nevertheless, by citing Ex parte Yarbrough, 788 So. 2d 128, 132 (Ala. 2000), the Court reinforced that an appeal is generally an adequate remedy for a party challenging a trial court's ruling on a motion to amend a complaint, and it is well established that "[t]he petitioner seeking a writ of mandamus bears the affirmative burden of proving the existence of the conditions requisite for issuance of the writ." Ex parte Vulcan Materials Co., 992 So. 2d 1252, 1259 (Ala. 2008).

1180596

the petitioner's motion to dismiss. Like a trial court's ruling on a motion to amend a complaint, a trial court's ruling denying a motion to dismiss is subject to mandamus review only in certain, limited circumstances -- the general rule is that an appeal provides an adequate remedy. See Ex parte Haralson, 853 So. 2d 928, 931 n.2 (Ala. 2003) ("The denial of a motion to dismiss ... generally is not reviewable by a petition for writ of mandamus, subject to certain narrow exceptions, such as the issue of immunity."). The petitioner in State Farm made a bare assertion that an appeal was inadequate but failed to explain why its case was extraordinary and merited an exception to the general rule that a postjudgment appeal provides an adequate remedy. Thus, we concluded that the petitioner had not met its burden of establishing that it was entitled to mandamus relief, and we denied its petition. Similarly, Gulf Health has not demonstrated that it lacks another adequate remedy. For that reason, we must deny its petition.

#### Conclusion

Faison sued Gulf Health alleging that his wife's death was the result of numerous acts of negligence committed by

1180596

Thomas Hospital employees while she was a patient there. Over a year after suing, Faison tried to amend his complaint by adding facts to support his claim. Gulf Health objected, arguing that the amendment was untimely and without good cause, but the trial court allowed it. Gulf Health then petitioned this Court for mandamus relief, arguing that the trial court exceeded its discretion by allowing the amended complaint. As explained above, however, it is unnecessary for us to consider the substance of the trial court's decision because Gulf Health did not meet its burden of showing that a postjudgment appeal is an inadequate remedy. Therefore, the petition is denied.

PETITION DENIED.

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

Bolin and Sellers, JJ., concur in the result.

1180596

SELLERS, Justice (concurring in the result).

It is well settled that the burden rests on the petitioner to demonstrate that its petition for a writ of mandamus presents an exceptional case -- that is, one in which an appeal is not an adequate remedy. Ex parte BOC Grp., Inc., 823 So. 2d 1270 (Ala. 2001). However, here, the opinion denies the petition solely on the basis that Gulf Health Hospitals, Inc., d/b/a Thomas Hospital ("Gulf Health"), failed to demonstrate that an appeal would not provide an adequate remedy. In my opinion, denying a petition solely on that basis sets an unnecessary precedent that either precludes or severely limits review of many important issues and, in essence, allows this Court to turn a blind eye to what could amount to a blatant injustice to a petitioner. This Court has routinely exercised its writ power as necessary to correct an erroneous trial-court ruling without addressing whether the petitioner had an adequate remedy by appeal. See Ex parte Alfa Mut. Ins. Co., 212 So. 3d 915 (Ala. 2016) (issuing writ directing trial court to vacate its order denying Alfa's motion to strike plaintiffs' amended complaint when plaintiffs failed to show good cause for amending original complaint

1180596

later than 42 days before date of initial trial setting); Ex parte Liberty Nat'l Life Ins. Co., 858 So. 2d 950 (Ala. 2003) (issuing writ directing trial court to grant insurance company's motion for leave to include affirmative defense); and Ex parte Bailey, 814 So. 2d 867 (Ala. 2001) (issuing writ directing trial court to allow plaintiff to amend complaint to assert additional claim against general contractor). I would further add that, although the burden always rests with the petitioner to demonstrate the elements required for the writ to issue, it is equally important, as with any appeal, that a party opposing the petition also address with some degree of specificity any alleged inadequacies of the petition. In this case, Larry D. Faison fails to challenge Gulf Health's omission of an argument that an appeal would not be an adequate remedy. In fact, neither party makes mention of the adequacy of an appeal whatsoever. For the stated reasons, I would address the merits of the case to determine whether Gulf Health has demonstrated a clear legal right to the relief sought.

Under Rule 15(a), Ala. R. Civ. P., amendments to pleadings are to be "freely allowed" unless there exists some

1180596

valid reason to deny them -- such as actual prejudice or delay. Ex parte GRE Ins. Grp., 822 So. 2d 388, 390 (Ala. 2001). In this case, the trial court denied the motion to strike the amended complaint without stating the theory or theories upon which it relied. Thus, the trial court could have determined, among other things, that, although there was a delay in filing the amended complaint, that delay would not cause any actual prejudice to Gulf Health. Gulf Health limits its argument solely to undue delay, without any discussion of prejudice. Accordingly, even assuming the trial court exceeded its discretion in failing to strike the amended complaint, Gulf Health, without arguing how allowing the amended complaint was prejudicial to it, has not demonstrated a clear legal right to the relief sought. For this reason, I concur to deny the petition.