

Rel: October 30, 2020

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Ex parte D.R.J. and Dana Sides

PETITION FOR WRIT OF MANDAMUS

(In re: Kathy King and Barry King

v.

D.R.J., a minor; Dana Sides; and State Farm Mutual
Automobile Insurance Company)

(Lee Circuit Court, CV-18-900058)

SELLERS, Justice.

D.R.J. and his mother, Dana Sides, petition this Court for a writ of mandamus directing the Lee Circuit Court to

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vacate its February 7, 2020, and May 15, 2020, orders holding that a pro tanto release executed in their favor was void, thus restoring them as defendants in the underlying lawsuit. We deny the petition.

Facts

On January 26, 2018, Kathy King and Barry King sued D.R.J. and Sides (hereinafter referred to collectively as "the defendants"), seeking damages for injuries the Kings sustained as a result of an automobile accident allegedly caused by the negligence of D.R.J., who was driving Sides's vehicle and who, at the time of the accident, was a minor. The Kings also sued their insurer, State Farm Mutual Automobile Insurance Company, seeking to recover underinsured-motorist ("UIM") benefits. Pursuant to Lowe v. Nationwide Insurance Co., 521 So. 2d 1309 (Ala. 1988), State Farm opted out of active participation in the litigation.

Thereafter, the defendants and their insurer, Alfa Mutual Insurance Company, offered to settle the Kings' claims for \$95,000. On January 18, 2019, counsel for the Kings notified State Farm of the settlement offer and requested that State Farm provide notice within 30 days as to whether it intended

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either to consent to the settlement offer or to advance the amount of the settlement offer and preserve its subrogation rights against the defendants.

On February 21, 2019, State Farm responded by offering the Kings \$25,000 to settle the UIM claim. State Farm explained in its response that, if the Kings rejected the offer to settle the UIM claim, then it would advance the \$95,000 settlement offer and preserve its subrogation rights against the defendants. The next day, the Kings rejected State Farm's offer to settle the UIM claim. There were no further communications between the parties regarding the settlement offer or the UIM claim.

On March 21, 2019, the Kings, without State Farm's consent, accepted the \$95,000 settlement offer and executed a pro tanto release in favor of the defendants, expressly reserving their UIM claim against State Farm. The Kings then filed a motion to dismiss all claims against the defendants, and, on March 29, 2019, the trial court entered an order dismissing all claims against the defendants with prejudice and noting that the Kings' UIM claim against State Farm remained pending. When State Farm learned of the settlement

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and the pro tanto release, it moved the trial court for a summary judgment, arguing that the Kings had forfeited their rights to UIM benefits by executing the pro tanto release without its consent as required by the policy the Kings had with State Farm. Alternatively, State Farm moved the trial court to set aside its March 29, 2019, order dismissing the defendants with prejudice and to place the litigation in the appropriate procedural posture that would have existed but for the Kings' alleged improper conduct. The Kings filed a motion in opposition, arguing that they were entitled to UIM benefits under the policy because of State Farm's alleged unreasonable delay in either consenting to the settlement offer or advancing the amount of the settlement offer. See Lambert v. State Farm Mut. Auto. Ins. Co., 575 So. 2d 160 (Ala. 1991).¹

¹In Lambert, this Court stated that a settlement should not take place without a UIM carrier having a "reasonable time" within which to investigate the claim and to notify its insured of its proposed action. The Kings asserted that 62 days had passed between the time State Farm was put on notice of the settlement offer and the date they accepted the offer. We express no opinion as to whether the timeliness of State Farm's response in this case was reasonable.

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On February 7, 2020, the trial court entered an order finding, as a matter of law, that "an unreasonable amount of time had not elapsed, after receiving notice, for State Farm to object to the proposed settlement." The trial court made no ruling on State Farm's motion for a summary judgment; rather, it declared that the pro tanto release executed by the Kings was void and that its ruling "restore[d] the status quo" of the case.

On May 15, 2020, the trial court entered an order, noting that its March 29, 2019, order dismissing the claims against the defendants was "neither expressly nor impliedly a final order" and that, pursuant to Rule 54(b), Ala. R. Civ. P., it was thus subject to revision at any time before the entry of a judgment adjudicating all the claims of all the parties. The trial court clarified that

"[t]he March 29, 2019, order dismissing the [defendants] pro tanto is hereby SET ASIDE. The intended effect of this order ... is that: (1) [The defendants] are restored to the action; (2) all of the [Kings'] claims remain pending as to [the defendants and State Farm]; and (3) the parties are welcome to, should they choose, renew previous settlement offers, resume negotiating, and the like."

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State Farm thereafter advanced the Kings \$95,000, the amount the defendants and Alfa offered to settle the Kings' claims.

Standard of Review

A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate "'(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 Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)).

Discussion

As indicated, on March 29, 2019, the trial court entered an order granting the Kings' motion to dismiss all claims against the defendants with prejudice. On February 7, 2020, the trial court entered an order holding that the pro tanto release executed by the Kings was void and stating that its ruling "restore[d] the status quo." The trial court entered the May 15, 2020, order to clarify that the intended effect of its previous order was that the March 29, 2019, order granting the Kings' motion was set aside because the release executed

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by the Kings, on which that order was based, was void, that the defendants were restored as parties to the lawsuit, and that all of the Kings' claims against the defendants and State Farm remained pending.

The defendants argue that they have a clear legal right to an order directing the trial court to set aside its February 7, 2020, and May 15, 2020, orders because, they say, in the absence of fraud or mutual mistake, the trial court lacked authority to void the pro tanto release -- the result of which restores them as parties to the lawsuit. The defendants further assert that, rather than voiding the pro tanto release, the trial court should have granted State Farm's motion for a summary judgment, which, they say, would have ended the litigation. The defendants, however, make no attempt to show how the matter complained of comes within any of the recognized situations appropriate for mandamus review. It is well settled that mandamus will not be granted for the purpose of merely reviewing trial-court error; rather, mandamus review has essentially been limited to well recognized situations in which the petitioners have a clear legal right to the relief sought from the trial court but the

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trial court has refused to grant the relief. See Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060 (Ala. 2014) (providing list of exceptional situations in which this Court has held mandamus review to be appropriate); see also Ex parte Hodge, 153 So. 3d 734 (Ala. 2014) (same). Accordingly, the defendants have not met their burden for the issuance of a writ of mandamus.

Conclusion

The defendants' petition for a writ of mandamus is denied.

PETITION DENIED.

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