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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**Allstate Property and Casualty Insurance Company**

v.

**Doyle Harbin**

**Appeal from Madison Circuit Court  
(CV-17-901688)**

SHAW, Justice.

The defendant below, Allstate Property and Casualty Insurance Company ("Allstate"), appeals from the Madison Circuit Court's order

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granting the posttrial motion of the plaintiff, Doyle Harbin, which sought the imposition of sanctions based on Allstate's purported violation of a pretrial mediation order. For the reasons provided herein, we reverse and remand.

### Facts and Procedural History

In 2015, Harbin was injured as the result of a motor-vehicle accident that he alleged was caused by Irvin Stewart. Harbin subsequently filed a complaint in the trial court asserting a negligence claim against Stewart. In the same complaint, Harbin also named Allstate, Harbin's automobile-insurance carrier, as a defendant and sought to recover uninsured/underinsured-motorist ("UIM") benefits under his Allstate policy. See generally Lowe v. Nationwide Ins. Co., 521 So. 2d 1309, 1310 (Ala. 1988). Harbin later settled his claim against Stewart, who was dismissed from the action with prejudice.

Following Stewart's dismissal, Harbin, without opposition from Allstate, requested that the scheduled trial date be continued and the matter referred to mediation. That motion was granted by the trial court. More particularly, the trial court's resulting mediation order, which

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specifically incorporated by reference both § 6-6-20, Ala. Code 1975, and the Alabama Civil Court Mediation Rules, indicated that mediation was "required" -- rather than optional -- and referenced the possibility of sanctions "for failure to attend sessions, for failure to deliver materials to the Mediator; for failure to pay the Mediator and for any other failure to follow the directives of the Mediator." In addition, among other things, the trial court's mediation order specified as follows:

"A representative of each party, which may be counsel, having full authority to settle the entire case for the party must attend the mediation conferences. In the event an insurance company is involved in the proceedings, it is strongly suggested that a representative of each insurance company be present at the mediation sessions. "

As indicated by the mediator's subsequent status report to the trial court, however, "[d]espite the excellent cooperation and very diligent efforts on both sides, [the parties] were not able to accomplish a settlement." As a result, the case was scheduled for trial.

Before the ensuing trial, the parties stipulated, among other things, that the maximum amount of damages Harbin could recover from Allstate if successful in proving his claim at trial was \$75,000 -- the limit of the

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available UIM coverage under his policy. At the conclusion of trial, the jury returned a verdict in Harbin's favor awarding him a total of \$690,000 in damages.<sup>1</sup>

Approximately two weeks later, Harbin filed a "Motion for Entry of Judgment and Motion for Sanctions," requesting that the trial court enter a judgment on the jury's verdict "in conformity with" the parties' pretrial stipulations and "further request[ing] sanctions in the form of costs and attorney's fees" as set forth therein. More particularly, Harbin first moved that, as the "prevailing party," he be awarded "costs and expenses" totaling \$5,141.36. In support of his request for sanctions, Harbin cited the purported

"undeniable fact that Allstate did not abide by [the trial court's] Order of Referral to Mediation, did not participate in the mediation in good faith, and forced the parties and the [trial court] to invest the time and money which was necessary to both prepare for and actually try this lawsuit for two days."

Although attempting to respect the confidentiality requirements also imposed by the trial court's mediation order, Harbin explained:

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<sup>1</sup>The parties' stipulations were not provided to the jury.

"The Court ordered that a representative of each party, which may be counsel, having full authority to settle the entire case for the party must attend the mediation [on that party's behalf]. The only representative for Allstate who attended the mediation was defense counsel. However, defense counsel did not have any authority to settle the case. No insurance adjuster from Allstate attended the mediation. The mediation lasted about 4 hours. During that time, Allstate never made any settlement offer or counteroffer whatsoever."

Further alleging that his medical bills exceeded \$230,000 and Allstate's alleged application of a purported "'Delay, Deny, and Defend Strategy'" in other cases, Harbin argued that Allstate's "obstreperous behavior" had "forc[ed] the parties and the [trial court] to invest the time, talent, and expenses associated with everything occurring since Allstate in bad faith failed to abide by the Order which set the Court-ordered mediation in which Allstate had agreed to participate." Thus, Harbin specifically requested that the trial court issue sanctions against Allstate requiring it to pay his trial-related attorneys' fees totaling \$52,375.<sup>2</sup>

In addition to itemizations supporting the claimed expenses and fees, Harbin also attached to his motion an order evidencing similar

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<sup>2</sup>Harbin's motion was accompanied by affidavit testimony itemizing and attesting to the propriety of the claimed amounts.

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alleged conduct by Allstate in another case in the Jefferson Circuit Court. The order indicated that court's determination that Allstate's actions in sending defense counsel to court-ordered mediation without either authorized settlement authority or an accompanying Allstate claims representative violated both its mediation order and the Alabama Civil Court Mediation Rules. According to Harbin's motion, and as allegedly indicated by the attachments, the "justification for sanctions" included the fact that "Allstate's conduct goes far beyond just affecting this case" and, instead, allegedly "affects all the courts of Madison County ... [and] contributes to backlogs of our civil justice system throughout Alabama."

As a result, Harbin concluded:

"The Court should further enter sanctions for the costs, expenses, and legal fees resulting from the bad faith conduct of Allstate in failing to participate in the mediation in good faith and, instead, forcing the parties and the Court to invest the time, talent, and expenses associated with everything occurring since. ..."

In response to Harbin's motion, Allstate conceded that Harbin was entitled to a \$75,000 judgment against Allstate as well as \$2,944.46 in claimed costs. As to the accompanying request for sanctions, however,

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Allstate argued that the motion was "unsupported by the facts and the law." Allstate allegedly declined, in responding to Harbin's motion, to breach applicable confidentiality rules by discussing what occurred during mediation, but it did indicate, contrary to Harbin's claims, that its counsel of record "attended and participated in the mediation conference as [Allstate's] representative in full compliance with [the trial court's] Mediation Order."

Thereafter, the trial court, in accordance with the parties' pretrial stipulations, entered a judgment in favor of Harbin in the amount of \$75,000; it also scheduled a hearing on Harbin's motion for sanctions. The record reflects that, during the hearing, Allstate's counsel engaged in the following exchange with the trial court:

"[Allstate's counsel]: ... I would object to the description that I ... had no settlement authority in the case. ... I'm probably being a little technical and splitting hairs here. But I agree ... that when we spoke to Your Honor prior to trial that we agreed that there seemed to be no ... reasonable expectation at that point that the case could be settled without a trial. ... [W]hat we object to as, you know, in terms of violating the confidentiality of mediation aspect of it, it appears that the plaintiff's contention here today, at least, is that essentially the Court can sanction a party for not settling a case. ...

"THE COURT: No. I don't believe that's what I'm being asked to do. ... I think, if I understand correctly, one of the parties sat at mediation for four hours and basically indicated that they were not going to be involved at all; that they had no discussion, whatsoever, as it might relate to potential settlement. No offers went back and forth, no discussion regarding settlement went back and forth.

"[Allstate's counsel]: I would disagree with that characterization, Your Honor, as the representative who was personally present in compliance with the Court's order. But due to the ... confidentiality provisions of [the] rules as well as this Court's order, I do not feel comfortable --

"....

"I will say this. Without getting into the specifics, my belief is that through the mediator we explored whether there was any possibility of getting to the point where we might be, i.e., both sides, might be close enough to where we might ... reach a meaningful chance to resolve the case. And through those discussions it became apparent, after some time, that that was not likely to take place."

Thereafter, in direct response to questioning by the trial court as to whether Allstate's counsel maintained the position that, as required by the trial court's mediation order, "not only [was he] a representative of [Allstate] but that [he] had full authority to settle the case," counsel responded in the affirmative and reiterated that he had possessed

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authority to settle the case "on terms acceptable to Allstate." The trial court followed up on counsel's response as follows:

"THE COURT: So you did not have full authority to settle the case?

"[Allstate's counsel]: ... [M]aybe I don't understand. What does 'full authority' mean in this context? I don't understand.

"THE COURT: What that means is ... if they had said, [']How about we give you an apple?['] Would you have been able to say yes or no?

"[Allstate's counsel]: Yes. I would have been able to do that."

Before the conclusion of the hearing, Harbin both reiterated the alleged "nonoccurrence of settlement discussions" during the court-ordered mediation and emphasized similar alleged conduct by Allstate in other Alabama cases and in the State of Georgia, as allegedly demonstrated by Harbin's evidentiary submissions.<sup>3</sup> When asked by the trial court at the

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<sup>3</sup>Allstate objected to Harbin's reliance on "extraneous exhibits" to the extent that, among other stated grounds, those exhibits "deal[t] with another case in another county in front of another judge with different circumstances," and it moved to strike those exhibits from the trial court's consideration. It later renewed its objection and motion to strike certain of Harbin's exhibits (or specified portions thereof) in written motions.

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hearing what specifically Harbin was seeking, Harbin's counsel replied with an accounting of enumerated expenses totaling \$57,516.36.

At the conclusion of the hearing, the trial court indicated that it viewed the only impediment to an award of the requested sanctions to be the mediator's status report evidencing the full cooperation of both parties. As a result, the trial court provided the parties with an additional 30-day period to supplement their prior filings.

Harbin subsequently supplemented his motion requesting the imposition of sanctions with, among other legal and factual submissions, arguments urging the trial court to "tak[e] into account the repetitive nature of Allstate's conduct." In addition to reminding the trial court of the circumstances of the previously identified case from the Jefferson Circuit Court, Harbin provided another Jefferson Circuit Court order imposing sanctions against an Allstate subsidiary based on a finding of noncompliance with a mediation order and information relating to an investigative news report from Georgia allegedly quoting "a former staff attorney for Allstate" as condemning Allstate's "low-ball" approach to pretrial settlement. Harbin's supplemental submission also included his

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own affidavit testimony (and identical affidavit testimony from his wife, who was also present at mediation) attesting to the following:

"Allstate ... did not send an adjuster to the mediation. In fact, I understand the Allstate attorney who did attend the mediation spent hours on the phone with the adjuster while everyone in my room just waited.

"At no time during the mediation did I have to make any decision about any settlement offer because no settlement offer was made."

Harbin further supplied affidavit testimony from the mediator explaining that the language in his status report suggesting the "'excellent cooperation' " by all parties was merely part of his form reply to the trial court rather than a comment on particular conduct in this case. Harbin's submissions again concluded with a request that the trial court "award costs in the total amount of \$5141.36 and attorney fees of \$52,375 such that total sanctions would be in the amount of \$57,516.36." Allstate, too, supplemented its earlier responsive filings to reiterate its position that its counsel had been present during mediation as its court-required representative with full authority to settle Harbin's claims "on terms acceptable to Allstate."

After a second hearing,<sup>4</sup> the trial court entered an order granting Harbin's motion based on its conclusions that Allstate "knowingly and willfully" violated the mediation order as alleged and "because the good and efficient functioning of the Alabama Court System requires ... Allstate's egregious conduct to cease." In that order, the trial court first recounted its factual findings related to Allstate's purported actions in willfully failing to abide by the trial court's mediation order in the present case as including the fact that Allstate did not have present at mediation the required representative with full authority to settle the case, the fact

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<sup>4</sup>Because of restrictions associated with the COVID-19 pandemic, the second hearing on Harbin's motion for sanctions was conducted by video conference and was not transcribed for inclusion in the record on appeal. As a result, Harbin filed, pursuant to Rule 10, Ala. R. App. P., a motion requesting that the trial court allow him to supplement the record to include his own recounting of the untranscribed sanctions hearing in order to address Allstate's argument that it lacked "notice that the issue of sanctions above costs and attorney's fees" would be considered by the trial court. Over Allstate's objection, the trial court granted Harbin's motion to supplement the record on appeal. Allstate, citing noncompliance with the procedural requirements of Rule 10(d), Ala. R. App. P., now moves to strike Harbin's supplement to the record. As discussed *infra*, however, because consideration of the information contained in the supplemental record is immaterial to our resolution of the present appeal, it is unnecessary that we rule on Allstate's motion.

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that Allstate failed to provide its counsel with any settlement authority, and the absence of an Allstate adjuster at the mediation. Based on those findings, the trial court determined that "Allstate [was] in contempt of" the mediation order and thus that "sanctions in the form of costs, expenses, and legal fees [were] appropriate."

The trial court's order next proceeded to enumerate the "Broader Justification for Sanctions" against Allstate, including its finding that "Allstate's conduct [went] beyond just the facts and conduct in this case." The trial court, as support for that finding, recited the apparent "repetitive" nature of Allstate's conduct, as demonstrated by the imposition of sanctions against Allstate for allegedly similar conduct in at least two cases before the Jefferson Circuit Court, of which it purported to take "judicial notice." Based on those additional circumstances, the trial court specifically held:

"[I]n the opinion of the Court, the amount of monetary sanctions requested by [Harbin] alone will not accomplish the overarching purpose of sanctions[,] which is not to just punish Allstate but is to alter the conduct of Allstate for the benefit of future litigants and the Alabama Court System."

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With an indicated intention of accomplishing both stated purposes, the trial court, rather than awarding the \$57,516.36 sanctions amount sought by Harbin, sanctioned Allstate in the total amount of \$620,141.36.

Thereafter, Allstate, which had already satisfied the \$75,000 judgment entered on the jury's verdict, also paid to the clerk of the trial court, as partial satisfaction of the trial court's total award, \$57,516.36 -- the amount requested in Harbin's motion seeking the imposition of sanctions. There is nothing in the record before this Court indicating that Allstate filed a postjudgment motion challenging the trial court's sanctions award before initiating the present appeal.

### Discussion

Allstate does not challenge on appeal the trial court's decision to issue sanctions on Harbin's request for costs and fees totaling \$57,516.36. Instead, Allstate solely challenges the trial court's award of sanctions insofar as that award exceeds the amount of costs and fees incurred by Harbin in this case.

I.

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As indicated, Allstate does not appear to generally challenge a trial court's authority to sanction alleged misconduct by a party in connection with a mediation order issued by that court. Instead, Allstate argues that the trial court lacked the authority to impose sanctions that went further than reimbursing Harbin for losses attributed to Allstate's alleged misconduct in this case. More particularly, Allstate argues that the trial court's sanctions award was unconstitutional to the extent that, in making the challenged award, the trial court failed to afford Allstate due process and to comport with required procedural safeguards; that the trial court erred in awarding sanctions exceeding the compensatory amounts Harbin actually requested; that Harbin's sanctions motion was untimely; and that the trial court's award exceeded the statutorily established maximum punishment for a finding of criminal contempt as provided for in § 12-11-30, Ala. Code 1975. In support of these claims, Allstate contends that the trial court's sanctions award amounted to a finding of constructive, criminal contempt as defined by Rule 70A, Ala. R. Civ. P., i.e., that the sanctions award related to misconduct occurring other than in open court and had a "dominant purpose of ... punish[ing] the contemnor." See Rule

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70A(a)(2)(B) and (C). Allstate further argues that, although direct contempt committed in open court may be summarily addressed, constructive contempt is subject to the Rules of Civil Procedure and must, instead, be addressed through proceedings requiring the initiation of a contempt action by means of the filing of a petition seeking a finding of contempt, requiring the issuance of process and notice to the alleged contemnor, and affording an accompanying right to counsel. See Rule 70A(c)(1)-(3).

We agree with Allstate's analysis insofar as it argues that the trial court found Allstate in constructive, criminal contempt and that the trial court's authority to sanction Allstate for that contempt was governed by our Rules of Civil Procedure and limited to the fines and punishments specified in § 12-11-30. See State v. Thomas, 550 So. 2d 1067, 1072 (Ala. 1989) (noting that "[d]irect contempts are those committed in the judge's presence, where all of the essential elements of the contempt are under the eye of the court, and are actually observed by the court," and that, "[i]f some of the essential elements of contempt are not personally observed by the judge, the contempt is indirect."), and Ex parte Ivey, 698 So. 2d 187,

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188 (Ala. 1997) ("This was 'criminal contempt' because it was imposed as punishment, rather than to induce [the contemnor] to perform some act."). See also Nave v. Nave, 942 So. 2d 372, 377 n.1 (Ala. Civ. App. 2005) (noting that when the trial court had failed to specify whether it had found a party to be in civil or criminal contempt, the trial court's finding, for the purposes of appeal, would be "treated ... as a finding of criminal contempt because it appears that the purpose of the finding of contempt was to punish ... rather than to insure compliance with the court's order"). Based on the language of the trial court's order, it is apparent that the trial court imposed sanctions based on an explicit finding that Allstate's alleged conduct during mediation amounted to constructive, criminal contempt of the trial court's mediation order. Therefore, we likewise agree that the trial court's authority to sanction Allstate was, as Allstate now contends, both governed by our Rules of Civil Procedure and limited to the fines and punishments specified by the legislature in § 12-11-30. However, there is nothing in the record before this Court indicating that Allstate raised any of the foregoing claims to the trial court during the proceedings below. As noted above, Allstate did not, before initiating the

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present appeal, file a postjudgment motion challenging the trial court's sanctions order. Moreover, our review of the record of the available transcript of the proceedings conducted by the trial court similarly fails to reveal an objection on any of the bases discussed in this section.

Accordingly, Allstate has waived those arguments for appellate review. See Hall v. Hall, 903 So. 2d 78, 81 (Ala. 2004) (quoting Norman v. Bozeman, 605 So. 2d 1210, 1214 (Ala. 1992)) (reiterating the well-established principles that "[appellate] review is limited to the issues that were before the trial court" and that "'an issue raised on appeal must have first been presented to and ruled on by the trial court.'"). See also Papaspiros v. Southeast Gen. Contractors, Inc., 982 So. 2d 1099, 1104 (Ala. Civ. App. 2007) (declining to consider appellants' argument that the trial court's actions both allegedly violated § 12-11-30(5) and failed to comply with the procedural requirements of Rule 70A because the appellants had failed to first present those claims to the trial court), and O'Barr v. O'Barr, 163 So. 3d 1076, 1082 (Ala. Civ. App. 2014) (concluding that the appellant's claim challenging, under Rule 70A, the propriety of the portion of the trial court's contempt order requiring him to pay the

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opposing party's legal fees was, to the extent the appellant had failed to first present that claim to the trial court, not properly preserved for appellate review).

## II.

Allstate also contends that the facts and evidence in the record before the trial court failed to support the trial court's contempt finding and accompanying award of sanctions. More specifically, according to Allstate, nothing in the record either supports the trial court's conclusion that Allstate failed to comply with the trial court's mediation order by failing to send to mediation a representative who possessed the full authority to settle the entire case or justifies the trial court's award.

### A.

In support of this alternate claim, Allstate first maintains that the trial court erred to the extent that, in imposing sanctions against Allstate in this case, it admittedly relied on "the acts of Allstate and its counsel in an entirely different proceeding, with entirely different facts, different governing Mediation Order language, and a different mediator." (Emphasis in original.) The premise that a trial court's criminal-contempt

powers are limited to punishing misconduct "committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings" or to punishing "[w]illful disobedience" to a duly issued order of that court seems self-evident in light of the plain language of Rule 70A(a)(2)(C)(i) and (ii). Assuming that Allstate preserved this particular claim by first raising it below,<sup>5</sup> Allstate, in its brief to this Court, fails to include citation to legal authority supporting its contention or to address -- or urge application of -- the language in Rule 70A(a)(2)(C)(i) and (ii) appearing to limit the trial court's consideration in such cases solely to proceedings before that court.

"Rule 28(a)(10), Ala. R. App. P., requires that arguments in an appellant's brief contain "citations to the cases, statutes, other authorities, and parts of the record relied on." Further, "it is well settled that a failure to comply with the requirements of Rule 28(a)(10) requiring citation of authority in support of the arguments presented

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<sup>5</sup>As noted in its filings before this Court and mentioned previously in note 3, supra, Allstate both objected to the presentation of evidence from other proceedings and moved to strike that evidence from the trial court's consideration. There is nothing in the record suggesting that the trial court ever specifically ruled on Allstate's motions, but the trial court's order explicitly relied on that evidence.

provides this Court with a basis for disregarding those arguments." State Farm Mut. Auto. Ins. Co. v. Motley, 909 So. 2d 806, 822 (Ala. 2005) (citing Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001)). This is so, because "'it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'" Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003)(quoting Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)).' "

Prattville Mem'l Chapel v. Parker, 10 So. 3d 546, 560 (Ala. 2008) (quoting Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007)).

Allstate did not include citation to authority or an analysis of Rule 70A in support of the argument presented. "It is the appellant's burden to refer this Court to legal authority that supports [its] argument." Madaloni v. City of Mobile, 37 So. 3d 739, 749 (Ala. 2009). Although this Court might question the admissibility and materiality of evidence of a party's character and conduct in other cases, because Allstate has failed to comply with the requirements of Rule 28(a)(10), we conclude that Allstate has also waived this issue for purposes of appellate review. See

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City of Birmingham v. Business Realty Inv. Co., 722 So. 2d 747, 752 (Ala. 1998) ("When an appellant fails to cite any authority for an argument on a particular issue, this Court may affirm the judgment as to that issue, for it is neither this Court's duty nor its function to perform an appellant's legal research.").

B.

Allstate next argues that the record fails to support the trial court's conclusion that Allstate violated the trial court's mediation order by failing to send a representative to mediation who possessed the full authority to settle the entire case.<sup>6</sup> In particular, Allstate contends that, in reaching a contrary conclusion, the trial court ignored the plain language of the mediation order as well as evidence suggesting Allstate's full compliance. We agree.

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<sup>6</sup>Because the trial court's sanctions order contained specific factual findings, it was unnecessary for Allstate to file a postjudgment motion challenging the sufficiency of the evidence below in order to preserve that issue for appellate review. Cf. New Props., L.L.C. v. Stewart, 905 So. 2d 797, 801–02 (Ala. 2004).

In addressing the standard applicable to the review of a criminal-contempt order in a civil case, our appellate courts have previously stated:

"Rule 70A(g)(2), Ala. R. Civ. P., authorizes an appeal in a case such as this. Insofar as we can tell, this Court, since adopting Rule 70A, Ala. R. Civ. P., has not considered the standard of review an appellate court should apply when reviewing a finding of criminal contempt. That issue has been addressed by the Court of Civil Appeals; see Gordon v. Gordon, 804 So. 2d 241 (Ala. Civ. App. 2001), and Shonkwiler v. Kriska, 780 So. 2d 703 (Ala. Civ. App. 2000). We agree ... that the standard of review in an appeal from an adjudication of criminal contempt occurring in a civil case is whether the offense, i.e., the contempt, was proved beyond a reasonable doubt. Hicks v. Feiock, 485 U.S. 624, 108 S. Ct. 1423, 99 L. Ed. 2d 721 (1988); Combs v. Ryan's Coal Co., 785 F.2d 970 (11th Cir. 1986); and United States v. Turner, 812 F.2d 1552 (11th Cir. 1987)(an attorney was found guilty of criminal contempt by United States District Judge Brevard Hand). In Turner, the Court, in discussing the standard of review in a criminal-contempt case, said:

" 'The essential elements of the criminal contempt for which punishment has been imposed ... are that the court entered a lawful order of reasonable specificity, [the alleged contemnor] violated it, and the violation was wilful. Guilt may be determined and punishment imposed only if each of these elements has been proved beyond a reasonable doubt.'

"Turner, 812 F.2d at 1563. The Turner court also stated, quoting Gordon v. United States, 438 F.2d 858, 868 n. 30 (5th Cir. 1971):

" ' "The test is whether the evidence is sufficient to justify the trial judge, as trier of the facts, in concluding beyond a reasonable doubt that the defendant was guilty, and that such evidence is inconsistent with any reasonable hypothesis of his innocence. Such is the substantial evidence test." ' "

"Turner, 812 F.2d at 1563."

Ex parte Ferguson, 819 So. 2d 626, 629 (Ala. 2001). See also L.A. v. R.H., 929 So. 2d 1018, 1019 (Ala. Civ. App. 2005) (applying the reasonable-doubt standard to review of a criminal-contempt order in a civil custody dispute that imposed a \$100 fine and required the contemnor to pay the opposing party's attorney's fees). " ' "[A]bsent an abuse of discretion, or unless the judgment of the trial court is unsupported by the evidence so as to be plainly or palpably wrong, the determination of whether a party is in contempt is within the sound discretion of the trial court." ' " C.D.M. v. W.B.H., 140 So. 3d 961, 967 (Ala. Civ. App. 2013) (citations omitted).

The trial court ostensibly sanctioned Allstate for, among other conduct, "not participating in the [court-ordered] mediation in good faith"

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by failing to provide a representative with authority to settle the case.

More specifically, it found:

"The Court ordered that a representative of each party, which may be counsel having full authority to settle the entire case for the party must attend the mediation. The only representative for Allstate who attended the mediation was defense counsel. However, defense counsel did not have the authority to settle the case. No insurance adjuster from Allstate attended the mediation. The mediation lasted over three (3) hours. During that time, Allstate never made any settlement offer or counteroffer."

First, as Allstate argues, it is apparent that the terms of the trial court's mediation order did not require the physical attendance of an Allstate adjuster. Instead, the order plainly stated that Allstate could be fully and adequately represented by counsel of record possessing settlement authority. Therefore, the absence of an adjuster would not support the trial court's finding of bad faith by Allstate. Further, the affidavit testimony Harbin submitted in support of his motion clearly indicated that, regardless, Allstate's counsel had -- and exercised, at length -- telephone access to an Allstate adjuster during the mediation.

Additionally, to the extent that the trial court apparently found that Allstate's counsel lacked any settlement authority, this Court agrees with

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Allstate that the record does not support such a finding. Section 34-3-21, Ala. Code 1975, provides: "An attorney has authority to bind his or her client, in any action or proceeding, by any agreement in relation to such case, made in writing, or by an entry to be made on the minutes of the court." In addressing whether an attorney ostensibly possessed "full authority to settle" a case on behalf of his client, this Court has noted, despite the presumptive authority provided by § 34-3-21, that "it is always a question of fact whether an attorney has the authority to make a settlement on behalf of his client." Alexander v. Burch, 968 So. 2d 992, 996 (Ala. 2006) (quoting Warner v. Pony Express Courier Corp., 675 So. 2d 1317, 1320 (Ala. Civ. App. 1996)). It was incumbent on Harbin, in order to counter application of the presumption set out in § 34-3-21 in the present case, to produce evidence demonstrating that Allstate's counsel lacked settlement authority.

As indicated in the trial court's sanctions order, the sanctions award was based, at least in part, on a finding that Allstate's counsel had allegedly "admitted in open Court[,] both before voir dire and at one of the sanctions hearings, that [he] did not have full authority to settle the entire

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case." However, neither the trial court nor Harbin explains the actual content of the alleged admissions. No such admission is found in the reporter's transcript of any pretrial proceedings. Moreover, as quoted above, at the transcribed sanctions hearing Allstate's counsel confirmed that he did have settlement authority. In fact, although he disputes the legal efficacy of that declaration, Harbin concedes in his appellate brief that Allstate's counsel "stated to the trial court that he had full authority to settle on terms acceptable to Allstate."

To the extent that it is suggested that any refusal to settle or make a settlement offer indicated lack of settlement authority, a decision cited by both parties states:

"[The phrase] '[f]ull authority to settle' does not mean that the individual must be willing to settle. Nor is it 'a requirement that [the individual] must come to court willing to settle on someone else's terms.' G. Heileman Brewing Co. [v. Joseph Oat Corp.], 871 F.2d [648] at 653 [(7th Cir. 1989)]. It simply means that the individuals at the settlement conference must be authorized by the parties both to explore fully settlement options and to agree at that time to any settlement terms acceptable to the parties."

In re Novak, 932 F.2d 1397, 1406 n.18 (11th Cir. 1991) (emphasis added).

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The only evidence offered by Harbin -- and relied on by the trial court in the order sanctioning Allstate -- in support of his contention that Allstate's counsel lacked full authority to settle was the apparent lack of back-and-forth settlement negotiations during mediation, a fact that Harbin terms "the archetype of failing to send someone with authority." However, Allstate's alleged failure to extend a settlement offer to Harbin during mediation does not demonstrate a lack of settlement authority. Novak, supra. Instead, as Allstate's counsel also explained to the trial court, it became apparent that the parties' settlement expectations were so disparate that compromise was unlikely.

The record also fails to contain any other evidence establishing that Allstate's counsel lacked the requisite authority to settle Harbin's claim on Allstate's behalf. Further, no evidence provided by the court-appointed mediator suggested that Allstate acted in bad faith.

It is well settled that a party may be held in criminal contempt for willfully disobeying or resisting a trial court's order. See Rule 70A(a)(2)(C)(ii), Ala. R. Civ. P. See also, e.g., Kreitzberg v. Kreitzberg, 131 So. 3d 612, 628 (Ala. Civ. App. 2013) (recognizing that, "in order to hold

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a party in contempt ... the trial court must find that the party willfully failed or refused to comply with a court order"). More specifically, a trial court may also issue, when a party fails to abide by that court's mediation order, sanctions against the offending party. See also § 6-6-20(c), Ala. Code 1975. Because the record before this Court fails to show any evidence indicating that Allstate violated the trial court's mediation order, the trial court exceeded its discretion by issuing the sanctions Allstate challenges. See C.D.M., *supra*. We therefore reverse the portion of the trial court's order imposing sanctions exceeding Harbin's request for costs and fees totaling \$57,516.36, and we remand the matter for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**

Parker, C.J., concurs.

Bryan, J., concurs in the result.

Mendheim and Mitchell, JJ., concur in part and concur in the result.

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MENDHEIM, Justice (concurring in part and concurring in the result).

I concur in the result reached by the main opinion, and I concur with Section II.B. of the main opinion. I agree fully with the analysis and rationale set forth in Section II.B., and I believe that the analysis and rationale set forth in that section is all that is necessary to reverse the trial court's order. Because I believe that the main opinion's discussion in Section II.B. is sufficient, I would pretermitt discussion of the other issues analyzed by the main opinion. Further, as to the disposition of this case, I would instruct the trial court to simply vacate the portion of its order assessing sanctions against Allstate Property and Casualty Insurance Company exceeding \$57,516.36 rather than generally remanding the case for the trial court to conduct "further proceedings consistent with this opinion," \_\_\_ So. 3d at \_\_\_; I do not interpret the main opinion as permitting the trial court to take any other action.

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MITCHELL, Justice (concurring in part and concurring in the result).

I concur in the analysis set forth in Section II.B. of the main opinion, which is all that is necessary to reach the decision to reverse and remand.

I express no view about the analysis set forth in Sections I and II.A. of the main opinion.