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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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Ex parte Shane A. Taylor and Shane A. Taylor & Associates, P.C.

PETITION FOR WRIT OF MANDAMUS

(In re: Kimberly Hall-Smith

v.

Shane A. Taylor and Shane A. Taylor & Associates, P.C.)

(Mobile Circuit Court, CV-21-900016)

WISE, Justice.

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This case involves a petition for a writ of mandamus filed by the defendants below, Shane A. Taylor ("Taylor") and Shane A. Taylor & Associates, P.C. ("the law firm"), asking this Court to direct the Mobile Circuit Court to vacate its March 22, 2021, order denying their motion to strike the jury demand in the complaint filed against them by Kimberly Hall-Smith, the plaintiff below, and to enter a new order granting their motion to strike.

Facts and Procedural History

Taylor is a licensed attorney; the law firm is his company and is located in Mobile; and Hall-Smith worked as paralegal for the law firm for a period. On August 21, 2020, the law firm and Hall-Smith entered into an "Employee Confidentiality Agreement" ("the agreement"), which included the following provision:

"JURY WAIVER. Employee and the Company acknowledge that jury trials significantly increase the costs of any litigation between the parties. It is also acknowledged that jury trials require a longer length of time to adjudicate the controversy. On this basis, all parties waive their right to have any matter related to this agreement or Employee's employment settled by jury trial."

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The agreement was signed by Hall-Smith. Kayla Luker signed the agreement for the law firm. Subsequently, the law firm terminated Hall-Smith's employment.

On January 5, 2021, Hall-Smith sued Taylor and the law firm in the Mobile Circuit Court. In the complaint, Hall-Smith alleged that she had been employed as a paralegal by the law firm and Taylor; that, "[o]n multiple occasions over a period of months during the course of [her] employment," Taylor had negligently, recklessly, and/or intentionally subjected her to "harmful, unwanted, offensive and sexually charged physical contact"; that Taylor had also made "multiple and regular sexually charged comments" to her; that, on one occasion, Taylor had exposed himself to her while in his office; that Taylor had come to her home uninvited; that Taylor had told her that he had flown his drone to her home and that he had actually done so; that, "on at least one occasion," Taylor had followed her "closely while both were in their respective vehicles, tailgating her, flying around her and then braking in front of her in an attempt to either cause her bodily harm or place her in fear of the same"; and that, when she made it clear to Taylor that she

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would not tolerate his continuing offensive conduct, Taylor terminated her employment, screamed at her, and told her he would " 'burn her to the f---- -- ground.' " Hall-Smith alleged that Taylor's conduct had caused her to suffer "severe and ongoing damages including but not limited to humiliation, fear, mental anguish and the loss of her employment." She asserted claims of negligence and/or wantonness and the tort of outrage/intentional infliction of emotional distress against Taylor and the law firm. Hall-Smith further asserted claims of assault, battery, and invasion of privacy against Taylor. Finally, the complaint included a demand for a trial by jury.

On February 12, 2021, Taylor and the law firm filed their answer to the complaint and a counterclaim against Hall-Smith. In their counterclaim, they asserted a conversion claim against Hall-Smith. In addition, the law firm asserted a claim of intentional interference with business relations against Hall-Smith.

On that same day, Taylor and the law firm filed a motion to strike Hall-Smith's jury demand based on the jury-waiver provision included in the agreement. They asserted that Hall-Smith's claims clearly arise from

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her employment with the law firm and that their counterclaims against Hall-Smith "are related to both the subject matter of the [agreement] and [Hall-Smith's] employment."

On February 16, 2021, Hall-Smith filed her first amended complaint in which she added two new claims against Taylor -- abuse of process and malicious prosecution. Taylor and the law firm subsequently filed their answer to the first amended complaint.

On March 18, 2021, Hall-Smith filed her response in opposition to the defendants' motion to strike her jury demand. She alleged that Taylor was not a party or a signatory to the agreement; that she and the law firm were the only parties to the agreement; and that, therefore, the agreement could not be enforced with respect to any claims against Taylor. However, Hall-Smith conceded that she had waived her right to a jury trial as to her negligence and/or wantonness claims against the law firm and asserted that the action should be bifurcated to allow her remaining claims to be heard by a jury. She specifically asserted:

"With one exception, none of the claims against the Firm in Count Five (Outrage/IIED) are in any way related to Ms. Hall-Smith's employment as they constitute an intentional tort for

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conduct outside and unrelated to the employment relationship. Complaint, paras. 1-15:25-29. Ms. Hall-Smith concedes that to the extent Count Five states a claim against the Firm related to her termination from employment, she has waived her right to a jury trial. As such, this specific claim should be bifurcated to allow her remaining claims to be heard by a jury."

(Emphasis in original.)

On March 18, 2021, the defendants filed an amended motion to strike Hall-Smith's jury demand. On March 22, 2021, after conducting a hearing, the trial court entered an order denying the defendants' motion to strike Hall-Smith's jury demand.¹

The defendants subsequently filed their petition for the writ of mandamus asking this Court to set aside the trial court's March 22, 2021, order denying their motion to strike and to enter an order striking Hall-Smith's jury demand. This Court ordered answer and briefs solely as to the issue whether the trial court had erroneously refused to strike Hall-

¹The defendants did not attach a copy of a transcript of the hearing to their petition.

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Smith's demand for a jury trial on her claims against the law firm.² Hall-Smith has not filed a response to the mandamus petition.

Standard of Review

"The standard governing our review of an issue presented in a petition for the writ of mandamus is well established:

" "[M]andamus is a drastic and extraordinary writ to be issued only where 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 Edgar, 543 So. 2d 682, 684 (Ala. 1989).

" Mandamus is an appropriate remedy where the availability of a jury trial is at issue, as it is in this case. Ex parte Merchants Nat'l Bank of Mobile, 257 Ala. 663, 665, 60 So. 2d 684, 686 (1952)."

²By ordering answer and briefs solely on the issue of Hall-Smith's jury-trial demand as to her claims against the law firm, we implicitly denied the petition for the writ of mandamus regarding the denial of the motion to strike her demand for a jury trial as to her claims against Taylor. See Ex parte Carson, 945 So. 2d 448 (Ala. 2006).

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"Ex parte Cupps, 782 So. 2d 772, 774-75 (Ala. 2000)."

Ex parte BancorpSouth Bank, 109 So. 3d 163, 166 (Ala. 2012).

Discussion

The defendants assert that the trial court erroneously denied their motion to strike Hall-Smith's demand for a jury trial on her claims against the law firm. The agreement included a provision in which Hall-Smith and the law firm each agreed to waive the right to a jury trial as to "any matter related to this agreement or Employee's employment." With regard to contractual waivers of the right to a jury trial, this Court has stated:

"The right to a jury trial is a significant right in our jurisprudence. 'Public policy, the Alabama Rules of Civil Procedure, and the Alabama Constitution all express a preference for trial by jury.' Ex parte AIG Baker Orange Beach Wharf, L.L.C., 49 So. 3d 1198, 1200-01 (Ala. 2010) (citing Ex parte Cupps, 782 So. 2d [772,] 775 [(Ala. 2000)]). Nevertheless, the right to a jury trial is not absolute in that 'no constitutional or statutory provision prohibits a person from waiving his or her right to trial by jury.' Mall, Inc. v. Robbins, 412 So. 2d 1197, 1199 (Ala. 1982).

"... In Gaylord Department Stores of Alabama v. Stephens, 404 So. 2d 586, 588 (Ala. 1981), this Court articulated three factors to consider in evaluating whether to enforce a contractual waiver of the right to trial by jury: (1)

whether the waiver is buried deep in a long contract; (2) whether the bargaining power of the parties is equal; and (3) whether the waiver was intelligently and knowingly made. ...

"....

"In Ex parte AIG Baker Orange Beach Wharf, L.L.C., [49 So. 3d 1198 (Ala. 2010)], this Court enforced broad jury-trial waiver language in a contract and ordered the trial court to grant the petitioner's motion to strike the jury demand. This Court recognized a distinction between contractual jury waivers that are limited to claims 'arising from' the agreement, which are to be narrowly constru[ed] and which exclude claims that do not require a reference to or construction of the underlying contract for resolution, and broader waiver provisions that cover claims 'arising out of or relating to' a contract. The AIG Baker Court relied upon analogous cases dealing with arbitration clauses, such as Selma Medical Center v. Manayan, 733 So. 2d 382 (Ala. 1999) (holding that arbitration clause covering any dispute 'concerning any aspect of' agreement between doctor and hospital required arbitration of fraudulent-inducement claim); Beaver Construction Co. v. Lakehouse, L.L.C., 742 So. 2d 159, 165 (Ala. 1999) (noting that '"relating-to" language has been held to constitute a relatively broad arbitration provision'); General Motors Corp. v. Stokes, 850 So. 2d 1239 (Ala. 2002) (broadly interpreting provision in dealer-relocation agreement calling for arbitration of claims 'arising under or relating to' agreement and negotiation thereof to include claims that manufacturer fraudulently induced dealer to enter into agreement); Ex parte Gates, 675 So. 2d 371 (Ala. 1996) (holding that clause in mobile-home sales contract providing for arbitration of claims 'arising from or relating to' the contract required arbitration of buyers' claims that defendants had misrepresented or concealed facts to induce them to enter

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into agreement because claims were asserted 'in connection with' contract); and Ex parte Lorance, 669 So. 2d 890 (Ala. 1995) (holding that clause in doctor's professional-services contract requiring arbitration of any controversy or claim 'arising out of or relating to' contract covered doctor's claim that he was fraudulently induced to enter into agreement)."

Ex parte BancorpSouth Bank, 109 So. 3d at 166-68. In this case, no issue has been raised as to the enforceability of the jury-waiver provision at issue.³ Thus, the only real question before this Court is whether Hall-Smith's claims against the law firm were "related to" the agreement or her employment with the law firm.

Hall-Smith asserted two counts against the law firm -- count one, which alleged a claim of negligence and/or wantonness, and count five, which alleged a claim of the tort of outrage/intentional infliction of emotional distress. In her response to the motion to strike, Hall-Smith conceded that she had waived her right to a jury trial as to her negligence and/or wantonness claim against the law firm. Therefore, it is clear that

³Hall-Smith did not raise any challenge to the enforceability of the jury-waiver provision in her response to the motion to strike that she filed in the trial court. Also, as noted previously, she has not filed a response to the mandamus petition.

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the trial court erred when it denied the motion to strike Hall-Smith's jury demand as to the negligence and/or wantonness claim against the law firm.

The next question is whether the trial court erred when it denied the motion to strike as to Hall-Smith's tort-of-outrage/intentional-infliction-of-emotional-distress claim against the law firm. In her response to the motion to strike, Hall-Smith made the general assertion that, with one exception, none of the claims she made against the law firm in count five of her complaint were in any way related to her employment. However, she concedes that, "to the extent Count Five states a claim against the Firm related to her termination from employment, she has waived her right to a jury trial." In the factual-allegations section of her amended complaint, Hall-Smith set forth allegations about Taylor's conduct directed toward her that allegedly took place during the course of her employment with the law firm. Additionally, in that section of her amended complaint, Hall-Smith went on to allege:

"14. At all material times, [the law firm] owed [Hall-Smith] a duty to adequately train, supervise and/or monitor

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[Taylor] to protect her, as an employee of the firm, against the type of conduct alleged herein.

"15. At all material times, [the law firm] breached said duty owed to [Hall-Smith] proximately causing her ongoing damages including humiliation, fear, mental anguish and the loss of employment."

(Emphasis added.) Further, in count five of her amended complaint, Hall-Smith asserted:

"25. The Plaintiff adopts and re-alleges each paragraph set forth above as if fully set forth herein.

"26. The above-described conduct on the part of the [the law firm and Taylor] was extreme and outrageous with an intent to cause and/or disregard of the substantial probability of causing severe emotional distress.

"27. The above-described conduct on the party of the Defendants was so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and is regarded as intolerable in a civilized community such that no reasonable person could be expected to endure it.

"The above-described conduct on the part of the Defendants constitutes outrage and/or intentional infliction of emotional distress."

When reading Hall-Smith's amended complaint as a whole, it is clear that her entire tort-of-outrage/intentional-infliction-of-emotional-distress claim relates to Hall-Smith's employment with the law firm. Therefore, the trial

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court also erred when it refused to strike Hall-Smith's jury demand as to her claim against the law firm alleging the tort of outrage/intentional infliction of emotional distress.

Conclusion

Because Hall-Smith's claims against the law firm were related to her employment with the law firm, she waived her right to a jury trial as to those claims. Therefore, the trial court erred when it denied the defendants' motion to strike Hall-Smith's demand for a jury trial as to her claims against the law firm. Accordingly, as to Hall-Smith's demand for a jury trial on her claims against the law firm, we grant the petition for the writ of mandamus, direct the trial court to vacate its March 22, 2021, order to the extent that it denies the motion to strike Hall-Smith's demand for a jury trial on her claims against the law firm, and direct the trial court to enter an order granting the motion to strike Hall-Smith's demand for a jury trial on her claims against the law firm.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Mitchell, J., concur.

Shaw and Bryan, JJ., concur in the result.

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Bolin, Sellers, Mendheim, and Stewart, JJ., dissent.