Rel: October 27, 2023



# SUPREME COURT OF ALABAMA

## OCTOBER TERM, 2023-2024

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## SC-2023-0423

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**Ex parte Michael Wayne Adams II**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Olivia Renee (Wright) Chavers**

**v.**

**Michael Wayne Adams II)**

**(Monroe Circuit Court: CV-22-900028)**

COOK, Justice.

PETITION DENIED. NO OPINION.

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

Sellers, J., dissents, with opinion, which Wise, J., joins.

SELLERS, Justice (dissenting).

I respectfully dissent. Almost a year after an automobile accident between Michael Wayne Adams II and Olivia Renee Wright,[1] Wright's attorney, Matthew Chavers, sent Adams's insurer, State Farm Mutual Automobile Insurance Company, a letter requesting that it tender a check in the amount of Adams's policy limit and provide an affidavit of his assets. In a letter emailed approximately two weeks later, State Farm noted that it had mailed a settlement check in the amount of Adams's policy limit of $25,000. Written in the check's remarks section was "BI Settlement." State Farm stated in the email that it had issued the check on the condition that Wright sign an accompanying release. Approximately 20 minutes later, Chavers replied that he would discuss with Wright her signing of the release but that in no event would he permit her to sign the release unless State Farm provided Adams's assets affidavit.

Eleven days later, an attorney retained by State Farm, Mark Ulmer, responded to Chavers's requests for an assets affidavit, noting

[1]It appears that at some point between the accident and the filing of this lawsuit, Wright married her attorney, Matthew Chavers. To avoid confusion, Wright is referred to by her maiden name.

that Alabama law does not require an insurer to furnish its insured's assets affidavit to obtain a settlement. Later that day, Chavers replied to Ulmer, contending that a settlement was never contemplated and that, regardless of common practice, he could sue State Farm to obtain the assets affidavit. Aside from an email sent two days later in which State Farm confirmed Adams's policy limit, communication between Chavers and State Farm ceased. A month and a half later, however, Chavers emailed State Farm to inform it that Wright had never received the check and to request that the check be reissued. That day, State Farm reissued the check with "As payment for injuries arising out of the auto accident of 4-6-2020" written in the remarks section. According to State Farm's financial logs, Wright deposited the check a week later.

Nine and a half months later -- one day before the expiration of the statute-of-limitations period -- Wright filed a complaint in the Monroe Circuit Court against Adams, asserting claims of negligence and wantonness. Ten and a half months later, Adams filed a "Motion to Enforce Settlement Agreement," and, a few days later, he filed a "Supplemental Motion to Enforce Settlement Agreement." Both motions requested that the circuit court enter an order acknowledging that the

parties had entered into a settlement agreement and enforcing that agreement against Wright, compelling Wright to execute the release of all claims against Adams, and dismissing the case with prejudice. Two and a half months later, the circuit court denied both motions. Approximately three weeks later, Adams filed a motion requesting that the circuit court reconsider its order denying Adams's motions to enforce the settlement agreement. The circuit court denied that motion, and Adams petitioned this Court for a writ of mandamus.

As a rule, this Court typically does not review the denial of a motion to dismiss or a motion for a summary judgment. See Ex parte Sanderson, 263 So. 3d 681, 685 (Ala. 2018). However, this case represents the rare exception to that rule because here, based on accord and satisfaction, Adams has a clear legal right to have the parties' settlement agreement enforced and the case dismissed. Any other result undermines this Court's policy of promoting settlements and curtailing unnecessary litigation. See, e.g., Allstate Ins. Co. v. Amerisure Ins. Cos., 603 So. 2d 961, 965 (Ala. 1992) ("[I]t is the policy of the law to encourage settlements." (citing Large v. Hayes, 534 So. 2d 1101, 1105 (Ala. 1988), and Maddox v. Druid City Hosp. Bd., 357 So. 2d 974, 975 (Ala. 1978))).

It is well established that

> "[a] writ of mandamus is an extraordinary remedy available only when there is: '(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)). Generally, "'"'[t]he denial of a motion to dismiss or a motion for a summary judgment ... is not reviewable by a petition for writ of mandamus ....'"'" Ex parte Sanderson, 263 So. 3d at 685 (quoting Ex parte University of S. Alabama, 183 So. 3d 915, 918 (Ala. 2016), quoting in turn other cases). Indeed, "this Court has declined to issue [an] extraordinary writ and has held that an appeal following a final judgment is an adequate remedy" when "no recognized exception [to the general rule] is applicable and in cases where it is not clear from the face of the complaint that a defendant has a clear legal right to a dismissal or a judgment in its favor." Id. at 688 (citing Ex parte Watters, 212 So. 2d 174, 182 (Ala. 2016)) (emphasis omitted).

Although no previously recognized specific exception to the general rule stated in Ex parte Sanderson is applicable here, it is abundantly

clear from the face of Wright's complaint that, based on accord and satisfaction, Adams has a clear legal right to the relief he seeks. "'Accord and satisfaction[]' ... is a term used for denoting one of the recognized methods of discharging a previously existing right. The nature or source of the previously existing claim is irrelevant. It may have been one arising from a contract, quasi contract, tort, or otherwise." 13 Sarah Howard Jenkins, Corbin on Contracts § 70.1, at 303 (Joseph M. Perillo ed., rev. ed. 2003). In this case, there was a dispute as to liability arising from an automobile accident between Wright and Adams. Wright solicited a check from Adams's insurer for the amount of Adams's policy limit, and Adams's insurer counteroffered by providing a check for that amount conditioned on Wright's fully releasing and discharging Adams, who expressly denied any liability. Wright contends, however, that the correspondence following the issuance of the check and the language in the memo section of a reissued check, which she deposited, made it clear that neither a settlement agreement nor the signing of a release was ever contemplated, much less agreed upon; therefore, Wright argues that, by depositing the check, she neither settled the dispute nor released Adams from any further liability.

I strongly disagree with that assertion. Although "[i]t is a question of fact whether the creditor knew or should have known [from the obligor's actions or expressions or from the circumstances] that the payment ... by check ... is tendered by the obligor in full satisfaction of the original claim," id. § 70.2(2), at 316, and although "[t]he obligor bears the risk of any uncertainty arising from the circumstances or its statements," id. § 70.2(2), at 316-17, Wright should not be permitted to profit from the "uncertainty" she manufactured by protesting the condition upon which the check was issued, but nevertheless depositing the check, the latter action indicating an acceptance in full of the terms of the settlement. Indeed, I fail to identify a material difference between this case and those in which a creditor writes on a check that the creditor cashes or deposits: "under protest or with reservation of all rights." Id. § 70.2(3), at 323. In those latter cases, such language does "not prevent the creditor's action of cashing or retaining the check from operating as an accord and satisfaction." Id.; see also, e.g., Ex parte Meztista, 845 So. 2d 795, 798 (Ala. 2001) (holding that creditor who deposited check that stated it was payment in full was estopped from denying that assertion, despite writing on check that her cashing it was not an acceptance of the

amount as payment in full). Here, Adams's insurer offered the check on the condition that Wright release Adams from further liability. Wright wrote Adams's insurer to protest the condition upon which the check was tendered, but that did not change the fundamental nature of the offer. Furthermore, when the check was reissued with a different statement on the memo line, that did not change the underlying condition to the offer, of which Wright remained well aware. Thus, Wright's depositing the check operated as an accord and satisfaction, settling the controversy and binding her to release Adams from future liability on her claims. From the face of Wright's complaint, which is based on the same facts that underlie claims already released by Wright, Adams has a clear legal right to the relief sought based on accord and satisfaction. Moreover, because Adams has demonstrated from the face of Wright's complaint a clear legal right to have the parties' settlement agreement enforced and the case dismissed, an appeal is inherently an inadequate remedy. See Ex parte Sanderson, 263 So. 3d at 687-88.

Beyond the facts of this case, I believe that, as a rule, when an insurance company tenders to a third-party claimant a check in an amount equal to the limit of its insured's policy, it should be eminently

clear to the third-party claimant's attorney that depositing the check amounts to an acceptance of the terms upon which it was tendered and binds the third-party claimant to a release of the insurance company and its insured, and the attorney should advise his or her client of those matters. There is simply no set of circumstances under which an insurance company's payment of its insured's policy limit could be construed or perceived as a partial payment, and an insurance company would never anticipate further litigation against its insured after making such a payment. It is common practice understood by lawyers in Alabama that an insurance company's tendering a check in the amount of its insured's policy limit creates an offer to resolve the case in its entirety. Once a third-party claimant deposits the check, he or she has accepted the offer, and that acceptance releases the insurance company and its insured from further litigation.

Under both the facts of this case and the general rule I have proposed, Adams has a clear legal right to the relief sought. I would therefore issue the writ of mandamus directing the circuit court to enforce the parties' settlement agreement by requiring Wright to execute the release and to dismiss the action, with prejudice.

Wise, J., concurs.