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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Ex parte State Farm Fire and Casualty Company

PETITION FOR WRIT OF MANDAMUS

(In re: Elizabeth Byars

v.

State Farm Fire and Casualty Company et al.)

(Madison Circuit Court, CV-16-900396)

MITCHELL, Justice.

State Farm Fire and Casualty Company ("State Farm") petitions this Court for a writ of mandamus directing the

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Madison Circuit Court to dismiss the claim filed against it by Elizabeth Byars, arguing that the claim is barred by § 27-23-2, Ala. Code 1975 ("the direct-action statute"). We deny the petition.

Facts and Procedural History

On November 22, 2015, Elizabeth Byars was visiting a residence in Huntsville owned by Hannelore Sims ("Hannelore") when she was attacked by a pit bull kept by Hannelore's adult grandson Cody Sims ("Cody"), who also resided at the property. The pit bull was allegedly owned by Belinda Jones, whose relationship to Cody and Hannelore is not clear from the materials before us. Byars sued Hannelore, Cody, and Jones in the Madison Circuit Court seeking to recover damages for her injuries. Cody was served with notice of Byars's lawsuit, but he failed to answer the complaint. On January 3, 2019, the trial court entered a default judgment against Cody, awarding Byars \$200,000.

On January 9, 2019, Byars amended her complaint to assert a claim against State Farm. Specifically, Byars alleged that State Farm had issued a homeowner's insurance policy insuring Hannelore's property and that, because a judgment had been

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entered against Cody -- Hannelore's relative who resided at the property -- Byars could assert a claim against State Farm under the direct-action statute, which provides:

"Upon the recovery of a final judgment against any person ... by any person ... for loss or damage on account of bodily injury, or death or for loss or damage to property, if the defendant in such action was insured against the loss or damage at the time when the right of action arose, the judgment creditor shall be entitled to have the insurance money provided for in the contract of insurance between the insurer and the defendant applied to the satisfaction of the judgment, and if the judgment is not satisfied within 30 days after the date when it is entered, the judgment creditor may proceed against the defendant and the insurer to reach and apply the insurance money to the satisfaction of the judgment."

Byars subsequently agreed to dismiss her claims against Hannelore.

On February 12, 2019, State Farm moved the trial court to dismiss Byars's claim against it, arguing that the direct-action statute did not allow Byars to simply amend her complaint to add State Farm as a defendant. Rather, State Farm argued, Byars was required to initiate a separate action to pursue any claim she might have against State Farm. In support of its motion, State Farm relied on Wiggins v. State Farm Fire & Casualty Co., 686 So. 2d 218, 219 (Ala. 1996), in

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which this Court affirmed a trial court's ruling that the direct-action statute did not allow a plaintiff, after the entry of a default judgment against a defendant, to add that defendant's alleged insurer as a new defendant and to pursue any insurance proceeds in that same proceeding.

Byars thereafter initiated garnishment proceedings against State Farm. She also filed a response in the trial court to State Farm's motion to dismiss, arguing that Wiggins was distinguishable and that, by adding State Farm as a defendant and then initiating garnishment proceedings, she was following a procedure recognized as proper by the United States District Court for the Southern District of Alabama in Armentrout v. Atlantic Casualty Insurance Co., 731 F. Supp. 2d 1249 (S.D. Ala. 2010). State Farm filed a reply disputing the applicability of Armentrout. In addition, State Farm argued in its reply that Byars's claim against it was barred by the plain language of the direct-action statute because she had asserted the claim six days after the trial court entered a default judgment against Cody, even though the direct-action statute authorizes such claims against an insurer only when a judgment "is not satisfied within 30 days after the date when

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it is entered." On February 20, 2019, the trial court denied State Farm's motion to dismiss without stating its rationale. On March 18, 2019, State Farm petitioned this Court for mandamus review.

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 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

When State Farm and Byars completed their briefing in this case, we had not yet released our decision in Ex parte State Farm Fire & Casualty Co., [Ms. 1170760, January 31, 2020] ___ So. 3d ___ (Ala. 2020), which similarly involved a petition filed by State Farm seeking a writ of mandamus

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directing the trial court to dismiss claims that were alleged to be barred by the direct-action statute.¹ In State Farm, we considered State Farm's various arguments about why mandamus review of the trial court's refusal to dismiss the allegedly barred claims was appropriate, but ultimately denied State Farm's petition, concluding that it had failed to establish "a viable basis for mandamus review." ___ So. 3d at ___. For that same reason, State Farm's petition must be denied here.²

The availability of mandamus review in a particular case necessarily implicates the third element of the mandamus standard -- whether the petitioner lacks "another adequate remedy." BOC Group, 823 So. 2d at 1272. State Farm's entire argument addressing this issue is as follows:

"Despite [State Farm's] diligent attempt to point out to the trial court this Court's clear direction in Wiggins, the trial court nevertheless denied State Farm's motion. Therefore, State Farm has no other remedy because absent issuance of a writ of mandamus, the underlying action will proceed

¹State Farm is represented by different counsel in this case than it was in State Farm.

²We recognize that in State Farm the plaintiff named State Farm as a defendant before obtaining a judgment against the insured, while Byars added State Farm as a defendant after obtaining a default judgment against an alleged insured. It is unnecessary, however, for us to consider whether this distinction bears any significance.

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with State Farm remaining as a party in violation of Wiggins. Marshall v. State, 884 So. 2d 900, 904 (Ala. 2003) ('The writ issued ... because [the petitioner] had no other remedy available to him.')."

State Farm's petition, p. 15. Thus, State Farm argues only that it has no other remedy because the action will proceed unless this Court orders the trial court to dismiss the claim Byars has asserted against it.³ State Farm fails to recognize, however, that even though a trial court may have erred in ruling on a motion to dismiss, that, by itself, is an insufficient basis for obtaining mandamus review. See Ex

³State Farm supports its argument by citing Marshall v. State, 884 So. 2d 900, 904 (Ala. 2003), in which this Court, describing its previous decision in Ex parte Weeks, 611 So. 2d 259 (Ala. 1992), stated that "[t]he writ issued ... because [the petitioner] had no other remedy available to him." State Farm does not attempt to explain how its case is similar to Marshall or Weeks beyond the otherwise unsupported assertion that, like the petitioner in Weeks, it has no other remedy. Both Marshall and Weeks involved prisoners who filed petitions for postconviction relief under Rule 32, Ala. R. Crim. P., but were not notified that those petitions had been denied until it was too late to file an appeal. This Court held that the only adequate remedy for those prisoners was a writ of mandamus authorizing an out-of-time appeal. See Marshall, 884 So. 2d at 905 (reaffirming the holding in Weeks "that the writ of mandamus is 'the only remedy available' to those who ..., through no fault of their own, fail to receive notice of the dismissal of their Rule 32 petition in time to effect a timely appeal therefrom"). State Farm does not articulate how these holdings authorize its own petition for the writ of mandamus when, unlike those prisoners, State Farm presumably could pursue its arguments in an eventual appeal.

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parte Sanderson, 263 So. 3d 681, 688 (Ala. 2018) (explaining that "a writ of mandamus is not available merely to alleviate the inconvenience and expense of litigation for a defendant whose motion to dismiss ... has been denied"). Rather, this Court has emphasized that, with few exceptions, an appeal provides an adequate remedy when a trial court has erroneously denied a motion to dismiss. Sanderson, 263 So. 3d at 685. See also Ex parte Jackson, 780 So. 2d 681, 684 (Ala. 2000) (stating that, "[i]n all but the most extraordinary cases, an appeal is an adequate remedy"). Because State Farm has not cited caselaw establishing that its petition falls within one of the recognized exceptions to the general rule prohibiting interlocutory appellate review,⁴ or otherwise explained why its case is extraordinary and merits a new exception to that general rule, its petition must be denied. See State Farm, ___ So. 3d at ___ (Mitchell, J., dissenting) (observing that "there is no requirement that a previous petitioner must have successfully sought mandamus relief in an earlier case involving the same issue").

⁴This Court has catalogued many of those exceptions in Ex parte U.S. Bank National Ass'n, 148 So. 3d 1060, 1064 (Ala. 2014).

Conclusion

State Farm petitions this Court for a writ of mandamus directing the trial court to dismiss the claim Byars has asserted against it because, State Farm argues, the direct-action statute bars a plaintiff who has obtained a default judgment against a defendant from then simply amending his or her existing complaint to add a new claim seeking to recover damages from that defendant's insurer. It is ultimately unnecessary, however, for us to consider that issue because State Farm has failed to meet its burden of establishing that it has no adequate remedy aside from a writ of mandamus. See Ex parte Brian Nelson Excavating, LLC, 25 So. 3d 1143, 1148 (Ala. 2009) (pretermittting consideration of the issue of law raised by the petitioner because of the availability of an adequate remedy on appeal). Accordingly, State Farm's petition is denied.

PETITION DENIED.

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

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

Sellers, J., dissents.