Rel: May 26, 2023

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2023-0001

Ex parte Huntingdon College, Stillman College, and Rhodes College

PETITION FOR WRIT OF MANDAMUS

(In re: The Bellingrath-Morse Foundation Trust, by and through its trustees, Regions Bank, Stephen G. Crawford, Walter B. Edgar, and George Garzon

v.

Rhodes College, Huntingdon College, and Stillman College)

(Mobile Circuit Court: CV-03-1755)

SC-2023-0011

Rhodes College, Huntingdon College, and Stillman College

v.

The Bellingrath-Morse Foundation Trust, by and through its trustees, Regions Bank, Stephen G. Crawford, Walter B. Edgar, and George Garzon

Appeal from Mobile Circuit Court
(CV-03-1755)

SELLERS, Justice.

These consolidated appellate proceedings involve a dispute between the trustees and beneficiaries of the Bellingrath-Morse Foundation Trust ("the Trust"). In appellate case no. SC-2023-0001, beneficiaries of the Trust -- Rhodes College, Huntingdon College, and Stillman College[1] -- petition this Court for a writ of mandamus directing the Mobile Circuit

[1]The colleges are the main beneficiaries of the Trust. Two churches are also listed as beneficiaries of the Trust; however, they are not parties to these appellate proceedings.

Court to vacate its November 23, 2002, order granting the trustees of the Trust -- currently, Regions Bank, Stephen G. Crawford, Walter B. Edgar, and George Garzon -- relief from a final judgment pursuant to Rule 60(b)(5), Ala. R. Civ. P. We grant the petition and issue the writ. In appellate case no. SC-2023-0011, the beneficiaries appeal from the same circuit-court order granting Rule 60(b)(5) relief to the trustees. We dismiss the appeal.

I. Procedural History and Facts

This is the second time a dispute relating to the Trust has been before us. See Ex parte Huntingdon Coll., 309 So. 3d 606 (Ala. 2020). Because an understanding of the relationship between the parties is necessary to an appreciation of the issues presented, this Court will recite the factual history once again. Walter D. Bellingrath, now deceased, established the Trust, a charitable trust, by a deed of trust dated February 1, 1950 ("the Trust indenture"). Bellingrath contributed to the Trust, both at its inception and through his will and codicil, substantial property, including the Bellingrath Gardens ("the Gardens") and his stock in the Coca-Cola Bottling Company ("the Bottling Company stock"). The trustees and the beneficiaries have historically disagreed as to

whether the Trust indenture contemplated the subsidy of the Gardens by the Trust and, if so, to what extent and with what limitations, if any.[2] The trustees believed that the Gardens were a "purpose" of the Trust, thus requiring perpetual funding to a "standard of excellence." The beneficiaries, on the other hand, believed that the Gardens were merely an asset of the Trust and, therefore, subject to closure if not profitable.[3] After lengthy negotiations, the parties executed a May 1981 settlement agreement ("the 1981 agreement"), outlining an acceptable and workable framework for managing the Trust and operating the Gardens. The 1981

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[2]Paragraph four of the Trust indenture provides:

> "The annual net income of the Trust, after payment of the expenses of administering the trust, including payment of the cost of maintenance, repair, replacement and operation of said Gardens … and after setting a part of the gross income, if any, as the … Trustees deem necessary as a reserve fund for the operation and maintenance of said Gardens …, shall be used, paid and applied by the … Trustees [to the beneficiaries in the amounts and percentages described in the Trust indenture]."

[3]A September 5, 1980, letter from Charles Arendall, one of the former attorneys for the trustees, confirmed that "uncontrollably large deficits over a number of years could be such a circumstance" warranting closure of the Gardens. In that same letter, Arendall noted that "records going back to 1934, long before the Trust Indenture was executed, and continuing through Mr. Bellingrath's lifetime …, show that only in one year, 1956, was a profit recorded [from the Gardens]."

agreement was conditioned upon the sale of the Bottling Company stock, which occurred in 1982. The 1981 agreement limited the payments or distributions by the Trust for the support of the Gardens, including any reserves for the Gardens, to an amount not to exceed 20% of the Trust's annual net income. The 1981 agreement also provided, in relevant part, that if the percentage of the annual net income of the Trust needed for the support of the Gardens exceeded 15%, then, upon request of any beneficiary, the trustees would seek instructions from the Mobile Circuit Court as to whether the Gardens should be kept open and, if so, what limitations should be placed upon the future use of the Trust's net income for the support of the Gardens, if any. Going forward, the trustees had difficulty operating the Gardens based on the agreed-upon subsidy in the 1981 agreement, and they voted to increase the distribution amount to the Gardens. That event triggered potential litigation regarding whether the Gardens should be kept open or not. In lieu of litigating the matter, on May 6, 2003, the parties executed a first amendment to the 1981 agreement ("the 2003 amendment"). The 2003 amendment provided, in relevant part:

> "1. [Explaining that, commencing October 1, 2002, the payout method by the Trust to the Gardens and to the

beneficiaries would no longer be based on the net income of the Trust. Rather, the payout method would be based on a percentage of a 12-quarter trailing average of the value of designated trust assets (sometimes referred to a unitrust or 'total-return' payout). The initial year's applicable rate was set at 6%].

"2. The [trustees] shall not change the applicable rate to an amount lower than five percent (5%) at any time in the future without the unanimous consent of the Beneficiaries.

"3. The parties agree that if the [trustees choose] to increase payments made by the Trust for the support of the Gardens, including any reserves for the Gardens, to as much as twenty percent (20%) of the distribution amount provided under paragraph 1 hereof, the Beneficiaries will not invoke their right [under the 1981 agreement] to require the [trustees] to seek court instructions, as provided in paragraph 2 of the [1981] Agreement. The [trustees] shall not increase such payments for the support of the Gardens, including any reserves for the Gardens, above such twenty percent (20%) limitation at any time in the future without the unanimous consent of the Beneficiaries.

"....

"9. The [trustees agree] that except as provided in the [1981] Agreement and this [2003] Amendment, [they] will not expend funds for the benefit of the Gardens from the corpus of [Trust] assets without the unanimous consent of the Beneficiaries.

"....

"11. The references in the [1981] Agreement and this [2003] Amendment to circumstances under which the parties may seek court instructions are not intended to exclude, limit or restrict any other remedies or rights of enforcement that

> may be available to the parties under applicable law. Nothing in [the 1981] Agreement or [the 2003] Amendment is intended to prevent any party from seeking court instructions with respect to the rights and duties of the parties.
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> "12. Other than as specifically changed by this [2003] Amendment, all of the terms and conditions of the [1981] Agreement remain in effect and are not changed, and the rights of the parties hereto thereunder are not waived or relinquished."

(Emphasis added.)

By executing the 2003 amendment, the beneficiaries, in relevant part, gave up their right to request that the trustees seek court instructions concerning whether the Gardens should be open or not, and the trustees agreed that they would not increase the payments for the support of the Gardens, including any reserves, above 20% of the total annual distribution amount ("the 20% cap") at any time in the future without the unanimous consent of the beneficiaries. On August 1, 2003, the Mobile Circuit Court entered a judgment approving and adopting the 2003 amendment ("the 2003 judgment"). In that judgment, the circuit court approved, as an equitable deviation to the Trust indenture, the Trust's payout method to a "total return" method.[4] Thereafter, even with

[4]See § 19-3B-412(b), Ala. Code 1975 (providing that "[t]he court may modify the administrative terms of a trust if continuation of the trust on

an increase in annual distributions from the Trust, the trustees continued to experience difficulties operating the Gardens based upon the agreed-upon 20% cap on the subsidy for the support of the Gardens.

In August 2017, the trustees, pursuant to § 19-3B-201, Ala. Code 1975,[5] filed in the Mobile Probate Court a petition for "emergency" instructions and declaratory relief with respect to the construction of the Trust indenture, the 1981 agreement, and the 2003 amendment and the administration of the Trust. The trustees specifically asserted that their ability to maintain the Gardens had been substantially impaired by the funding restraints of the 1981 agreement and the 2003 amendment, and they sought instructions on how the existing funding agreement regarding the Gardens should be revised. The probate court entered an order essentially nullifying the 2003 amendment. Huntingdon College then sought mandamus relief, requesting that this Court direct the probate court to vacate that order and dismiss the action. On March 27, 2020, this Court issued a writ of mandamus ordering the probate court

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its existing terms would be impracticable or wasteful or impair the trust's administration").

[5]Section 19-3B-201, Ala. Code 1975, addresses the role of a court in the administration of a trust.

to dismiss the trustees' action on the basis that the probate court lacked jurisdiction to modify the 2003 judgment incorporating the 2003 amendment. See Ex parte Huntingdon Coll., 309 So. 3d at 611 (noting that, because the trustees sought to revise the 2003 judgment, they were required to file in the circuit court a motion for relief from the judgment pursuant to Rule 60(b), Ala. R. Civ. P.).

After this Court released its opinion in Ex parte Huntingdon College, the trustees immediately filed a motion in the circuit court seeking relief from the 2003 judgment pursuant to Rule 60(b)(5), alleging that new circumstances had arisen since the 2003 judgment was entered, rendering prospective application of the 2003 judgment inequitable. After considering the evidence submitted by the parties, the circuit court entered an order pursuant to Rule 60(b) that, among other things, removed the 20% cap on the subsidy for the support of the Gardens from the 2003 judgment and returned full discretion to the trustees, as originally granted to them by the Trust indenture, to provide annual support for the Gardens, including a reserve sufficient to fulfill the Gardens' purpose. The beneficiaries petitioned this Court for a writ of mandamus directing the circuit court to vacate its Rule 60(b) order,

arguing, among other things, that the Rule 60(b)(5) motion was not filed within a reasonable time, as contemplated by Rule 60(b), and that the motion lacked merit. The beneficiaries also filed an appeal challenging the Rule 60(b) order. This Court consolidated the appellate proceedings and stayed the proceedings in the circuit court pending resolution of the appellate proceedings.

II. 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))."

Ex parte Alabama Dep't of Corr., 252 So. 3d 635, 636 (Ala. 2017).

A petition for a writ of mandamus is a proper method for attacking an order granting relief pursuant to Rule 60(b). Ex parte Wallace, Jordan, Ratliff & Brandt, L.L.C., 29 So. 3d 175 (Ala. 2009). Relief from a final judgment under Rule 60(b) is an extreme remedy to be used only when a party can demonstrate exceptional circumstances warranting such relief. Ex parte A & B Transp., Inc., 8 So. 3d 924, 932 (Ala. 2007). The decision to grant or deny a motion filed pursuant to Rule 60(b) is

within the sound discretion of the trial court; our standard of review is limited to determining whether the trial court exceeded its discretion. Id.

III. Discussion

A. The Appeal

The beneficiaries filed an appeal, appellate case no. SC-2023-0011, out of an "abundance of caution" in the event this Court determined that the circuit court's Rule 60(b) order was an appealable order. "An order granting a motion seeking relief from a judgment under Rule 60(b), Ala. R. Civ. P., is generally considered an interlocutory order because further proceedings are contemplated by the trial court; therefore, such an order is not appealable." Ex parte Overton, 985 So. 2d 423, 424 (Ala. 2007). A Rule 60(b) order is appealable only when the order conclusively adjudicates the entire controversy between the parties. See, e.g., Wal-Mart Stores, Inc. v. Pitts, 900 So. 2d 1240, 1244 (Ala. Civ. App. 2004) (holding that order granting relief under Rule 60(b) was appealable because it "conclusively adjudicated the entire dispute between the parties as to the payment of medical services [and] no further action was left to be taken" by the trial court); Littlefield v. Cupps, 371 So. 2d 51, 52 (Ala. Civ. App. 1979) (holding that order granting relief from void

judgment under Rule 60(b)(4), on the basis that the trial court had lacked jurisdiction to enter the judgment, finally disposed of case and therefore was immediately appealable); and Sanders v. Blue Cross-Blue Shield of Alabama, Inc., 368 So. 2d 8, 9 (Ala. 1979) (holding that order granting relief under Rule 60(b) was final when no further proceedings were contemplated in the trial court). Among other things, the Rule 60(b) order in this case removes the 20% cap for support of the Gardens from the 2003 judgment. The Rule 60(b) order then authorizes the trustees to negotiate with the beneficiaries regarding a new specified percentage for support of the Gardens, as long as that percentage is not permanent. The Rule 60(b) order then directs that, if the parties are unable to agree on a specified percentage, they must schedule and participate in mediation regarding the matter. The Rule 60(b) order finally states that, in the event mediation is unsuccessful, the parties are required to inform the circuit court, and a hearing will be scheduled on the matter. The Rule 60(b) order is interlocutory because it contemplates further proceedings in the circuit court. The Rule 60(b) order does not conclusively adjudicate any dispute that may arise between the parties regarding a specific percentage that may be used for the support of the Gardens. Rather, the

issue of a specified percentage was left open, and the circuit court retained jurisdiction to resolve any controversy that might arise between the parties concerning the matter. Because the Rule 60(b) order is not a final, appealable order, the appeal is dismissed. See Ex parte Overton, supra.

B. The Mandamus Petition

1. Timeliness of the Rule 60(b)(5) Motion

Rule 60(b)(5) permits a trial court to relieve a party from a final judgment "when new facts or new law arises after the original judgment is entered, rendering prospective application of the judgment inequitable." Satterfield v. Winston Indus., Inc., 553 So. 2d 61, 63 (Ala. 1989).[6] The discretion afforded the trial court in ruling on a Rule 60(b)(5) motion "applies to the determination of whether such a motion has been filed within a reasonable time as well as to the merits of the motion."

[6]We assume that the 2003 judgment, which incorporated the 2003 amendment, operated prospectively by leaving open the possibility that certain portions of the 2003 amendment could be modified if the beneficiaries unanimously consented. See Twelve John Does v. District of Columbia, 841 F.2d 1133, 1139 (D.C. Cir. 1988) (A judgment is "prospective" when it is either "executory" or involves "the supervision of changing conduct or conditions.")

Pittman v. Pittman, 397 So. 2d 139, 142 (Ala. Civ. App. 1981). On January 29, 2021, the trustees filed a motion pursuant to Rule 60(b)(5); that motion was filed more than 17 years after the 2003 judgment was entered on August 1, 2003.[7] In their motion, the trustees sought to nullify the terms that were bargained for by the parties and memorialized in the 2003 judgment. As a threshold matter, however, this Court must determine whether the trustees met their burden of demonstrating that their Rule 60(b)(5) motion was filed within a reasonable time.[8] The phrase "reasonable time" is not susceptible of a precise definition. Rather, what constitutes a "reasonable time" depends on the individual facts of each case, taking into consideration "'the

[7]Notably, the trustees purported to file two previous Rule 60(b) motions in the circuit court, neither of which asserted any grounds for relief under Rule 60(b). Rather, the motions are best described as petitions for instructions and declaratory relief.

[8]A Rule 60(b) motion based on grounds (1) through (3) must be filed no more than four months after the entry of the judgment, and a motion based on grounds (5) and (6) must be filed within a "reasonable time." Rule 60(b). By contrast, a motion filed under ground (4) on the basis that a judgment is void may be filed at any time and, a judgment granting relief under Rule 60(b)(4) unlike one granting relief under the other Rule 60(b) grounds, is subject to a de novo standard of review. See Ex parte Full Circle Distrib., L.L.C., 883 So. 2d 638 (Ala. 2003).

interest in finality, the reason for delay, the practical ability to learn earlier of the grounds relied upon, and prejudice to other parties.'" Adams v. Farlow, 516 So. 2d 528, 557 (Ala. 1987) (quoting Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981)) (emphasis omitted).[9] In this case, we find particularly relevant to our consideration of this issue the finality of the 2003 judgment and the prejudice that the beneficiaries will suffer as a result of reopening that judgment.

a. Finality of the 2003 Judgment

It is well settled that a trial court "must approach all issues regarding the reopening of such long-settled judgments in the light of the strong arguments in favor of finality of a prior judgment." Ex parte State ex rel. J.Z., 668 So. 2d 566, 569 (Ala. 1995); see also Bates v. Stewart, 99 So. 3d 837 (Ala. 2012) (holding that the plaintiffs were not entitled to

[9]The trustees assert that Alabama appears to have no decisions applying Rule 60(b)(5)'s "inequitable prospective application" element in the context of a judgment regarding the administration of a trust. They further assert that the cases relied on by the beneficiaries are distinguishable because those cases were decided under Rule 60(b)(6). However, Alabama caselaw makes no distinction between the "reasonable time" requirement as it applies to Rule 60(b)(5) and (6). Rather, as indicated, what constitutes a "reasonable time" is based on the particular facts of each case, taking into consideration the above-listed factors, if applicable and relevant.

reopen a judgment approving a settlement agreement under Rule 60(b)(6) more than eight years after the final judgment was entered); and Helms v. Helms' Kennels, Inc., 646 So. 2d 1343, 1347 (Ala. 1994) ("Our society benefits from a judicial system that recognizes and respects the finality and definiteness of a trial court's 'final judgment' deciding what was previously disputed and uncertain. If the rights of litigants were allowed to remain unsettled indefinitely, chaos would surely result.").

Because the trustees had the burden of demonstrating that the Rule 60(b)(5) motion was filed within a reasonable time, we will first address their argument regarding the timeliness of the motion. The trustees claim that the Rule 60(b)(5) motion was filed within a reasonable time because, they say, the circuit court has an ongoing duty under trust law to modify the administration of the Trust if changed circumstances have impaired a purpose of the Trust. See § 19-3B-412(a), Ala. Code 1975 (providing that a court "may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust"). In other words, the trustees maintain that when a party seeks Rule 60(b)(5) relief from a consent judgment entered by the

trustees and the beneficiaries of a trust, the "overriding consideration" for a trial court is whether the consent judgment upholds the grantor's intent.[10] The trustees place great emphasis on the "purpose" of the Trust, noting that both the probate court in the void probate-court action and the circuit court in this action construed the Trust indenture and agreed that support of the Gardens was a purpose of the Trust that must be upheld according to Bellingrath's intent, as expressed in the Trust indenture. However, in Ex parte Huntingdon College, this Court held that the trustees could seek relief from the 2003 judgment only in the circuit court pursuant to Rule 60(b). We pointed out that, rather than filing a Rule 60(b) motion for relief from the 2003 judgment in the circuit court, the trustees had initiated "an entirely new proceeding in the

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[10]The trustees assert that Lowrey v. McNeel, 773 So. 2d 449, 453 (Ala. 2000), establishes that the circuit court had equitable jurisdiction to modify the 2003 judgment and to issue new instructions in the same action. Lowrey, however, did not involve a Rule 60(b) proceeding; rather, it involved a petition to modify a consent judgment, which expressly stated that the trial court would "'be the arbiter of all disputes relating to both the consummation and implementation of the agreement,' and that the court would 'retain jurisdiction of this matter for all purposes.'" 773 So. 2d at 451. In this case, the circuit court did not retain jurisdiction of the administration of the Trust. See § 19-3B-201(b), Ala. Code 1975 ("A trust is not subject to continuing judicial supervision unless ordered by the court.").

probate court seeking review of the entirety of the [Trust], its operations, and its distributions, as if the previously negotiated 1981 Agreement and the 2003 Amendment were of no effect." 309 So. 3d at 611. Rather than limiting their Rule 60(b) motion to the grounds stated in Rule 60(b), the trustees employed the same tactic in the circuit court, leading that court to conclude that, because the 2003 judgment allowed the parties to seek court instructions at any time, not only was the Rule 60(b)(5) motion filed within a reasonable time, but also that the court had a "clean slate to interpret and enforce" the 2003 judgment. Based on that reasoning, it is clear that the circuit court failed to take into consideration the finality of the 2003 judgment. Rather, the circuit court purported to construe the Trust indenture, finding that supporting the Gardens and Christian education were equal purposes of the Trust and that, therefore, the Gardens were required to be maintained perpetually under the trustees' sole discretion. The circuit court also purportedly interpreted the 2003 amendment, concluding that the 20% cap on the subsidy for the support of the Gardens was not permanent. This Court acknowledges that paragraph 11 of the 2003 amendment, which was incorporated in the 2003 judgment, permits the parties to seek court instructions with regard

to their rights and duties regarding the Trust. However, the right to seek court instructions regarding the administration of a trust does not supersede a trial court's duty under Rule 60(b) of balancing the competing interests regarding finality of a judgment and fairness to all the parties. Therefore, the circuit court exceeded its discretion in finding that it had a clean slate "to interpret and enforce" the 2003 judgment and, thus, by considering matters outside the parameters of its discretion under Rule 60(b).

In this case, the circuit court failed to appreciate that the trustees and the beneficiaries had executed the 1981 agreement and the 2003 amendment to resolve their long-standing dispute regarding whether the Trust indenture contemplated a subsidy of the Gardens by the Trust and, if so, to what extent. The 1981 agreement specifically indicated that the trustees and the beneficiaries had engaged in lengthy discussions, that both were represented by counsel, and that they had "agreed to resolve their differences." The 2003 amendment, which was incorporated into the 2003 judgment, eliminated any threat of the Gardens being closed while, at the same time, capping the subsidy for the support of the Gardens -- specifically providing that the trustees "shall not" increase the payments

for support of the Gardens, including any reserves for the Gardens, above the 20% cap "at any time in the future without the unanimous consent of the Beneficiaries." For all that appears, the parties intended that the Gardens would operate under the 20% cap at all times in the future, subject to modification only if the beneficiaries unanimously consented. Based on the contractual history of the parties and the amount of time that has elapsed since the entry of 2003 judgment, we conclude that the interest in finality weighs heavily against finding that the trustees sought Rule 60(b)(5) relief within a "reasonable time." See e.g., Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 769 F. Supp. 671, 705 (D. Del. 1991) (noting that "the Court must keep in mind that both parties compromise to avoid litigation and the Court must take care not to upset the balance of interest reached through the compromise of the parties under the guise of interpreting the Consent Decrees").

b. Prejudice to the Beneficiaries

For more than 17 years, the beneficiaries relied upon receiving no less than 80% of the total annual distribution from the Trust in connection with their operations and long-term strategic planning. As part of the bargain struck between the parties and approved by the

circuit court in the 2003 judgment, the beneficiaries agreed to give up their right under the 1981 agreement to request that the trustees seek court instructions as to whether the Gardens should be closed, which was a significant, existential risk because the Gardens have historically never been profitable. As part of that bargain, the beneficiaries also agreed that they would receive at least an 80% share of the Trust's distributions, while the Gardens would receive no more than 20%. The circuit court determined that the beneficiaries would not be prejudiced by reopening the 2003 judgment because, it reasoned, the distributions to the beneficiaries from the Trust "change[] annually." The circuit court expressed in its Rule 60(b) order that the trustees "have offered to fashion their requested relief in a manner which is least disruptive to the [beneficiaries'] endowment[s] and financial planning, and the Court is inclined to oblige the [beneficiaries] by holding the Trustees to that offer." We do not believe that the circuit court has that discretion under Rule 60(b)(5) and we cannot agree with such reasoning. It is undisputed that the trustees have extensive plans to greatly expand the Gardens and that the Rule 60(b) order, as it stands, returns full discretion to the trustees to implement those plans, to the detriment of the beneficiaries, who have

relied on the 2003 judgment. See Regions Bank v. Lowrey, 101 So. 3d 210, 219 (Ala. 2012) ("A trustee owes the beneficiaries of a trust the duty of loyalty, which requires the trustee to preserve trust assets and to administer the trust solely in the interest of the beneficiaries."). Accordingly, we conclude that the prejudice to the beneficiaries also weighs against finding that the trustees sought Rule 60(b)(5) relief within a "reasonable time."

After reviewing the facts of this case regarding the parties' contractual history, and taking into consideration the finality of the 2003 judgment and the prejudice to the beneficiaries who have relied on that judgment for many years, we conclude that the trustees did not file their Rule 60(b)(5) motion within a reasonable time. Therefore, we conclude that the circuit court exceeded its discretion in reopening the 2003 judgment. To this end, we add that the parties are not prohibited from seeking court instructions "with respect to the rights and duties of the parties," but those rights and duties relate to the administration of the Trust and do not include any right to alter what has, with the passage of time, become vested rights of the beneficiaries under paragraphs 2, 3,

and 9 of the 2003 amendment, which was incorporated into the 2003 judgment.

2. The Merits

The import of this Court's holding that the Rule 60(b)(5) motion was not filed within a reasonable time is that we are not required to consider the merits of the Rule 60(b) order. See Bates, 99 So. 3d at 853-54 ("Because we hold that the … plaintiffs did not file their Rule 60(b) motion within a reasonable time, we need not reach their argument in that motion that they proved extraordinary circumstances that justified their attempt to reopen the judgment."). In this case, we nevertheless deem it necessary to point out that, even if the trustees had filed their Rule 60(b)(5) motion within a reasonable time, they have not demonstrated the type of extraordinary circumstances necessary to justify reopening the 2003 judgment. The trustees rely on two circumstances that, they claim, make prospective application of the 2003 judgment inequitable. The trustees first claim that the 2003 judgment has prevented them from implementing needed renovations and modernization of the Gardens, which have fallen behind industry

standards since 2003, as well as the standard established by the Trust indenture.[11] In their Rule 60(b)(5) motion, the trustees claim:

> "[T]he interests, expectations and demographics of potential visitors have undergone a sea change, as have the programs, amenities and infrastructure necessary for a public garden to attract the younger and more diverse audience necessary to survive and thrive. However, due to the funding restrictions agreed to among the parties and accepted by [the circuit court] in the [2003 judgment], the Trustees have been unable to implement any of the interactive cultural, scientific, community-gardening or health-related programming that have become industry standard since 2003, and the amenities, infrastructure and facilities at the Gardens are woefully inadequate to attract new members, much less to meet Mr. Bellingrath's standards."

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[11]Paragraph two of the Trust indenture states, in relevant part:

> "The … Trustees shall continue, so far as possible the general plan of Bellingrath Gardens; that is, a garden of flowers and embellishing shrubbery of the size and arrangement of the Gardens as of this date[, i.e., February 1950] ….
>
> "….
>
> "It is my hope that the Trustees will be ever mindful of excessive overhead expenses for the management of this [Trust] in order that the maximum possible benefits will accrue to the beneficiaries thereunder …."

(Emphasis added.)

The trustees offered evidence in the form of affidavits and depositions to demonstrate that the Gardens' substandard facilities and amenities and programming deficits will directly and negatively impact their ability to attract visitors and to earn revenue. They further maintain that Bellingrath did not intend or direct that the Gardens "be frozen in time at their 1950 or 2003 state." It is well settled that relief under Rule 60(b)(5) is generally not warranted if the factual conditions relied upon to attack a final judgment were anticipated at the time the judgment was entered. See Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 385 (1992) ("Ordinarily, … modification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree. … If it is clear that a party anticipated changing conditions that would make performance of the decree more onerous but nevertheless agreed to the decree, that party would have to satisfy a heavy burden to convince a court that it agreed to the decree in good faith, made a reasonable effort to comply with the decree, and should be relieved of the undertaking under Rule 60(b)").

In this case, the evidence suggests that, when the 2003 judgment was entered in August 2003, the trustees knew that the 20% cap on the

subsidy for the support of the Gardens would be insufficient to carry out their future plans for renovation and modernization of the Gardens. As early as July 2003, the trustees had a draft of a "master plan" for the Gardens, which proposed the construction of, among other things, an events center for weddings, receptions, business meetings, concerts, symposiums, and other social gatherings; a history museum; a "Boehm Porcelain Gallery"; and a "Bird Study" and/or "Butterfly Garden." In May 2004, the trustees ratified the formation of a new foundation, the Bellingrath Gardens and Home Foundation, which was created solely for the purpose of raising money for the Gardens (for operation and maintenance for assisting with capital projects relating to the Gardens) by establishing and maintaining one or more endowments. Notably, in an April 26, 2004, email, Elmore Inscoe, a former trustee, conveyed her thoughts to the trustees at that time regarding the Bellingrath Gardens and Home Foundation. Inscoe explained in the email that it was her understanding that it was very hard "to make ends meet with the money [the Gardens receive] from the [Trust] and this situation will most likely continue for the years to come." Inscoe further indicated that she had to "sadly" say that the trustees "would not be in [their] present condition …

if [they] had held to the original stated intent of Walter Bellingrath." It is undisputed that the trustees ultimately did not proceed or proceeded minimally with the fundraising plans for the Gardens. As confirmed by the circuit court in its Rule 60(b) order, the trustees were able "to implement only a small fraction of the 2003 master plan due to the funding restrictions" that the trustees "accepted" in the 2003 judgment. Because the evidence suggests that the trustees knew when the circuit court entered the 2003 judgment that the 20% cap would be insufficient to carry out their future plans for the Gardens, they have not demonstrated the existence of an extraordinary change in circumstance sufficient to warrant reopening that judgment. See, e.g., Mitten v. Wisconsin Brands, Inc., 600 So. 2d 997, 998 (Ala. 1992) ("It is settled law that the extraordinary remedy provided by Rule 60(b), [Ala.] R. Civ. P., is not for the purpose of relieving a party from the consequences of his free, calculated, and deliberate choices.").

The trustees also claimed in their Rule 60(b)(5) motion that the 2008 recession rendered prospective application of the 2003 judgment inequitable:

> "[D]ue to the severe impact of the 2008 recession on the Trust's endowment, the amount of funding provided to the

> Gardens under the 2003 Amendment was unexpectedly and severely diminished from 2009 to 2020, causing the Gardens to drastically limit such critical operational functions as marketing and programming, and leaving the Gardens unable to maintain and/or … repair their existing facilities and infrastructure."

It is undisputed that conversion of the Trust in 2003 to a "total return" trust provided more flexibility for the Trust's investment advisors and trustees, allowing them to gradually change the Trust's investment-portfolio allocation to a greater emphasis on equities or alternative investments to respond to the effects of inflation. April Boudreaux, an accountant with Smith, Dukes & Buckalew, stated in her deposition that, after the Trust converted to a total-return trust in 2003, the value of the Trust steadily increased, as did the distributions to the Gardens. Boudreaux stated in her affidavit that the distributions from the Trust to the Gardens rose from $494,653 in 2002 (before the total-return conversion) to $1,091,618 in 2008. She further stated in her deposition that, at the time of the recession in 2008, the distributions from the Trust to the Gardens dropped nearly 30%. Boudreaux provided a chart reflecting the following distributions to the Gardens from 2003 until 2019: (2003) $1,124,137; (2004) $992,402; (2005) $998,744; (2006) $1,024,393; (2007) $1,061,158; (2008) $1,091,618; (2009) $905,978;

(2010) $838,467; (2011) $779,550; (2012) $750,134; (2013) $799,922; (2014) $799,699; (2015) $881,582; (2016) $881,436; (2017) $898,818; (2018) $899,009; (2019) $908,616; and (2020) $918,718. Boudreaux stated that, because the "total return" approach approved in 2003 uses a "12-quarter rolling average … the effects of market volatility are smoothed somewhat, but it also takes a longer time for distribution levels to recover fully from a recession." The chart undisputedly reflects a decline in the distributions to the Gardens during certain years as a result of the 2008 recession. However, both the trustees and the beneficiaries knew at the time they executed the 2003 amendment that a change in the economy was foreseeable. Although the trustees claim that they could not have anticipated the depth and length of the 2008 recession, it is worth noting that the beneficiaries, too, suffered from decreased distributions from the Trust. But, those distributions were still substantially more than the beneficiaries received before the 2003 amendment took effect. Allocating an annual distribution based on a percentage, rather than a fixed amount, assures that each beneficiary received a predictable amount. Thus, any change in circumstances based on national economics was not a unilateral change affecting only the

Trust, but, rather, was shared by all beneficiaries proportionally. Therefore, to hold that changes in the economy automatically opens the door for relitigation of the merits of every affected consent judgment would undermine the finality of such judgments and could serve as a disincentive to negotiate settlements. Accordingly, we conclude that the 2008 recession is not the sort of extraordinary circumstance contemplated under Rule 60(b)(5).

IV. Conclusion

In appellate case no. SC-2023-0001, we conclude that the beneficiaries have demonstrated a clear legal right to a writ of mandamus directing the circuit court to vacate its November 23, 2002, Rule 60(b) order. We therefore issue the writ, directing the circuit court to vacate that order. In appellate case no. SC-2023-0011, we dismiss the appeal filed by the beneficiaries concerning that same order.

SC-2023-0001 -- PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bryan, and Mendheim, JJ., concur.

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

Mitchell and Cook, JJ., recuse themselves.

SC-2023-0011 -- APPEAL DISMISSED.

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

Mitchell and Cook, JJ., recuse themselves.