

Rel: September 2, 2022

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210119

Ex parte Sidetrack Plaza, LLC, et al.

PETITION FOR WRIT OF MANDAMUS

(In re: Hari Har, LLC

v.

Sidetrack Plaza, LLC, et al.)

(Tuscaloosa Circuit Court, CV-21-900812)

WISE, Justice.

Sidetrack Plaza, LLC, Rajvinder Singh, Maninder Pruthi, Parminder Pruthi, and Union Track Plaza, LLC ("the petitioners"), petition this Court for a writ of mandamus directing the Tuscaloosa

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Circuit Court to vacate its October 15, 2021, order purporting to vacate its September 21, 2021, order transferring the underlying action to the Greene Circuit Court. We grant the petition and issue the writ.

Facts and Procedural History

On September 10, 2021, Hari Har, LLC, the plaintiff below, commenced a declaratory-judgment action in the Tuscaloosa Circuit Court against the petitioners. On September 20, 2021, the petitioners filed motions to dismiss or, in the alternative, to transfer the case to the Greene Circuit Court. On September 21, 2021, the Tuscaloosa Circuit Court entered an order granting the motions to transfer the case to Greene County ("the transfer order"). On that same day, Hari Har filed a motion to reconsider the transfer order. On September 23, 2021, the Tuscaloosa Circuit Court entered an order setting a hearing on the motion to reconsider for October 8, 2021.

The case-action-summary sheet from the Greene Circuit Court includes an entry for 12:26 p.m. on September 29, 2021, stating: "COMPLAINT E-FILED." That case-action-summary sheet also includes multiple entries for 12:52 p.m. on September 29, 2021, including one entry stating "FILED THIS DATE: 09/29/2021" and another entry

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assigning the case to a Greene County circuit judge. Finally, the petitioners attached a letter from the Tuscaloosa Circuit Clerk's office.

That letter states:

"Our Case #: 63-CV-2021-900812

"To Whom it May Concern:

"The above case has been transferred to Greene County Circuit Court. The documents from this case can be found on Alacourt. Please return this letter to my attention with the new case number, so we may add it to our records. If you have any questions, please do not hesitate to contact me."

The letter includes a line labeled "NEW CASE #," on which the new Greene Circuit Court case number has been written, and a line labeled "DATE FILED," on which "9/29/2021" has been written. The letter was stamped as filed in the Greene Circuit Court on September 29, 2021.

On September 29, 2021, at 1:13 p.m., the Tuscaloosa Circuit Court entered an order stating:

"On September 21, 2021, this court granted a motion transferring this case from Tuscaloosa County to Greene County. Later that day, the Plaintiff filed a motion to vacate the transfer order. The court has set the motion to vacate for hearing. The clerk is directed to 'retrieve' this case from Greene County, if it's been transferred, during the pendency of the motion to vacate and pending further orders of this court."

The Tuscaloosa Circuit Court subsequently rescheduled the hearing on the motion to reconsider to October 14, 2021. On October 15, 2021, after having conducted the hearing, the Tuscaloosa Circuit Court entered an order that states:

"This matter is before the court on the Plaintiff's Motion to Reconsider this court's order transferring venue of this action to Greene County, Alabama (Doc. 25). Having considered the written submissions of the parties and the arguments of counsel, this court determines that the Plaintiff's Motion to Reconsider is due to be GRANTED. This court's order of September 21, 2021 is hereby VACATED and SET ASIDE. The Defendants' Motion to Dismiss, or Alternatively to Transfer Venue, is due to be and hereby is DENIED. See, Professional Insurance Corporation v. Sutherland, 700 So. 2d 347 (Ala. 1997) and Ex parte Riverfront, LLC, 129 So. 3d 1008 (Ala. 2013)."

(Capitalization original.) The petitioners subsequently filed a petition for the writ of mandamus asking this Court to direct the Tuscaloosa Circuit Court to vacate its October 15, 2021, order.

Standard of Review

"Mandamus 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 Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)."

Ex parte Marshall, 323 So. 3d 1188, 1194-95 (Ala. 2020).

Discussion

The petitioners argue that the Tuscaloosa Circuit Court did not have jurisdiction to enter the October 15, 2021, order in which it purported to vacate the transfer order because it entered that order after the case file had been sent to and docketed by the Greene Circuit Court.

In Ex parte Sawyer, 873 So. 2d 166 (Ala. 2003), the defendants in that case filed a motion to transfer the case to the Mobile Circuit Court. On August 26, 2002, the Montgomery Circuit Court, instead, entered an order transferring the case to the Baldwin Circuit Court. On September 3, 2002, the plaintiff in that case filed a motion to reconsider in the Montgomery Circuit Court. The case was docketed in the Baldwin Circuit Court on September 6, 2002. On September 26, 2002, the defendants filed a response to the motion to reconsider in which they asserted that the Montgomery Circuit Court did not have jurisdiction to entertain the motion to reconsider because the case had already been transferred to the Baldwin Circuit Court. On December 4, 2002, after conducting a hearing, the Montgomery Circuit Court entered an order in which it purported to grant the plaintiff's motion to reconsider "and

order[ed] that the action '[be] transferred to Montgomery County.'" 873 So. 2d at 167.

The defendants sought mandamus review and argued that the Montgomery Circuit Court had lacked the authority to enter the December 4, 2002, order purporting to return the case to the Montgomery Circuit Court. This Court agreed, stating:

"This Court summarized the relevant legal principles in Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001):

"Once the transferor court has granted the motion to transfer the case and the file has been sent to, and docketed by, the transferee court, the transferor court cannot then change its mind and vacate or set aside its transfer order or order the case returned. Ex parte Morrow, 259 Ala. 250, 66 So. 2d 130 (1953). Furthermore, the trial judge of the transferee court may not consider a motion to retransfer the case to the county in which it was originally filed. Ex parte Tidwell Indus., Inc., 480 So. 2d 1201 (Ala. 1985). The aggrieved party's sole remedy in such a case is a petition for writ of mandamus directed to the transferor court.

"Where the trial court has improperly ordered a transfer, mandamus against the transferor court is an appropriate remedy, notwithstanding the fact that an order has been entered which moves the case to the transferee court. The transferee court lacks authority to consider a motion to retransfer an action to the

county in which it was initially filed. Mandamus to the transferor court is the appropriate avenue for seeking redress of any error in the transfer."

"² Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated § 82.4, p. 553 (3d ed. 1996) (citations omitted)."

"As previously noted, the Baldwin Circuit Court, the transferee court, docketed this case on September 6, 2002. Thereafter, the Baldwin County circuit judge assigned to the case entered orders in the case. Therefore, [the plaintiff's] 'sole remedy [was] a petition for writ of mandamus directed to the transferor court.' The trial court's December 4, 2002, order purporting to order the case returned to the Montgomery Circuit Court was a nullity and must be vacated."

Ex parte Sawyer, 873 So. 2d at 167. See also Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001)(holding that the Jefferson Circuit Court's order purporting to set aside its previous transfer order was a nullity because, "[a]t that point, the case had already been transferred to Tuscaloosa County, a case file had been created and a Tuscaloosa County case number assigned, and the Tuscaloosa County circuit judge assigned to the case had entered orders in the case").

In this case, the Tuscaloosa Circuit Court entered its order purporting to vacate its previous transfer order on October 15, 2021.¹ However, at that time, the case had already been sent to and docketed by the Greene Circuit Court. Additionally, the Greene Circuit Court case-action-summary sheet shows that a Greene County case number had been assigned to the case and that the Greene Circuit Court had already set the case for a preliminary hearing. Therefore, Hari Har's "'sole remedy [was] a petition for writ of mandamus directed to the transferor court.'"² Ex parte Sawyer, 873 So. 2d at 167. The Tuscaloosa Circuit

¹The Tuscaloosa Circuit Court had previously entered an order in which it directed the Tuscaloosa Circuit Clerk "to 'retrieve' this case from Greene County, if it's been transferred during the pendency of the motion to vacate and pending further orders of this court." However, the Greene Circuit Court's case-action-summary sheet indicates that the case was docketed in the Greene Circuit Court at 12:26 p.m. on September 29, 2021, and the Tuscaloosa Circuit Court did not enter its order "to 'retrieve' this case" until 1:13 p.m. on September 29, 2021. Additionally, as noted by the petitioners, "[t]he Greene County case action summary does not indicate that any action was taken in response to the September 29, 2021, order." Petition at p. 13. In fact, that case-action-summary sheet indicates that, on October 4, 2021, the Greene Circuit Court set the case for a preliminary hearing. Further, the petitioners and Hari Har state that the case remains in the Greene Circuit Court.

²Hari Har subsequently filed a petition for a writ of mandamus challenging the Tuscaloosa Circuit Court's transfer order. On February 16, 2022, this Court, by order, denied that petition as untimely filed. Ex parte Hari Har, LLC (No. 1210148).

Court's October 15, 2021, order is a nullity and must be vacated. See Ex parte Sawyer, supra; Ex parte MedPartners, supra.³

Conclusion

Because the case had already been transferred to and docketed by the Greene Circuit Court, the Tuscaloosa Circuit Court's October 15, 2021, order was a nullity. See Ex parte Sawyer, supra; Ex parte MedPartners, supra. Accordingly, we grant the petition for the writ of mandamus and direct the Tuscaloosa Circuit Court to vacate its October 15, 2021, order in which it purported to grant Hari Har's motion to reconsider, to vacate its September 21, 2021, transfer order, and to deny

³In its brief to this Court, Hari Har does not dispute that the case had already been sent to and docketed by the Greene Circuit Court at the time the Tuscaloosa Circuit Court entered its October 15, 2021, order. Rather, the majority of Hari Har's argument focuses on the reasons why the Tuscaloosa Circuit Court erred when it entered the transfer order. Hari Har does assert that "[t]he Sawyer court relied upon Ex [p]arte Morrow[,] [259 Ala. 250, 254-55,] 66 So. 2d 130, 134 (Ala. 1953). The precedent and the time frame of the origins of precedent of the Ex [p]arte Morrow line of cases should be re-considered." Brief in opposition to petition at pp. 15-16. However, it has not presented any compelling reason to do so.

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the petitioners' motions to transfer.

PETITION GRANTED; WRIT ISSUED.

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