Rel: August 25, 2023

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

# SUPREME COURT OF ALABAMA

**SPECIAL TERM, 2023**

---

**SC-2023-0098**

---

**Reddoch Shane Jackson**

**v.**

**Enterprise State Community College**

**Appeal from Coffee Circuit Court**
**(CV-17-900149)**

COOK, Justice.

This is a contract-interpretation case. Reddoch Shane Jackson suffered an on-the-job injury while working as the "Assistant Plant

Supervisor" for Enterprise State Community College ("ESCC"). As a result of his injury, Jackson's ability to perform his job became severely limited. To avoid terminating Jackson from his position, ESCC entered into an agreement with Jackson, pursuant to which ESCC agreed to allow Jackson to resume his job if he produced a "fit-for-work" certificate from an orthopedic surgeon on or before August 31, 2017. If he failed to do so, Jackson agreed that he would resign from his position with ESCC.

After Jackson failed to produce the agreed-upon documentation and then refused to resign from his position, ESCC commenced a breach-of-contract and declaratory-judgment action against him in the Coffee Circuit Court. After determining that Jackson had breached the terms of their agreement by refusing to resign from his position after he failed to submit the agreed-upon documentation, the trial court entered a summary judgment in favor of ESCC, which Jackson now appeals.

Jackson contends that the provisions of the agreement governing the documentation he agreed to produce are ambiguous and, under the doctrine of contra proferentem, must be construed against the drafting party -- here, ESCC. For the reasons stated below, however, we hold that the doctrine of contra proferentem is a doctrine of last resort that is

inapplicable in this case, and we affirm the trial court's summary judgment in favor of ESCC.

Facts and Procedural History

As stated previously, Jackson was employed by ESCC as the college's "Assistant Plant Supervisor," a position that undisputedly involved "strenuous manual labor," including installing floor tile and suspended ceilings, repairing broken window glass, painting the interior and exterior of campus buildings, and repairing roofing. In 2016, Jackson injured his right knee in a work-related accident, and, on August 24, 2016, he underwent surgery.

In December 2016, after completing physical therapy, Jackson underwent a "functional capacity evaluation" ("FCE") at Southern Bone and Joint Specialists to determine whether he was physically capable of returning to work and performing the essential functions of his job. The results of that FCE revealed that, although Jackson had made some progress through physical therapy, he had great difficulty performing certain physical activities, including squatting, kneeling, stair climbing, and ladder climbing, due to increased pain and pressure on his right knee. As a result, the physical therapists who evaluated him

recommended that his physical activities in those areas be limited and that he specifically be prohibited from climbing ladders.

Following that evaluation, Jackson's results were reviewed by orthopedic surgeon Dr. Rory Farris. Although Dr. Farris concluded that Jackson could return to work, he also concluded that Jackson could do so only with reasonable accommodations and restrictions as indicated in the FCE report provided by Southern Bone and Joint Specialists.

After receiving the FCE report from Southern Bone and Joint Specialists and Dr. Farris's report, ESCC retained the Alabama Department of Rehabilitation Services ("ADRS") to help it determine what reasonable accommodations, if any, ESCC could provide Jackson if he decided to return to work. According to ESCC, after reviewing the FCE report and Dr. Farris's report, ADRS concluded that it did not "see any way to fully accommodate [Jackson] in [his] current job" and that "the inability to climb a ladder or kneel greatly limit[ed] the possibility of [him] returning to work."

In light of ADRS's conclusions, ESCC offered to transfer Jackson to a similar position at its Mobile campus so that he could continue to work but would not be required to perform any strenuous labor. Jackson

declined. According to Jackson, over the next couple of months, he tried resuming his normal work activities, but he continued to experience issues with his right knee.

To avoid terminating Jackson from his position due to his tenuous physical condition, on June 19, 2017, ESCC and Jackson entered into what they called a "settlement agreement." Under the terms of that settlement agreement, the parties agreed that Jackson would be permitted to undergo additional physical rehabilitation with the help of an orthopedic surgeon in the hope that doing so would allow him to work toward being able to perform all of his job functions again. ESCC agreed to continue to pay Jackson his salary and benefits while he underwent such treatment.

In that settlement agreement, the parties also agreed to the following:

> "2. <u>If Jackson is unable to secure from a treating orthopedic surgeon on or before August 31, 2017, a fit for duty certificate</u> allowing and/or releasing him to perform the essential functions of his job as Assistant Plant Supervisor including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations, <u>Jackson unconditionally and irrevocably agrees to resign</u> his employment at Enterprise State effective August 31, 2017. Jackson shall submit a letter of resignation effective August 31, 2017, to the President of Enterprise State.

> "3. <u>If Jackson secures a fit for duty certificate prior to August 31, 2017</u>, allowing and/or releasing him to perform the essential functions of his job, including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations, <u>he shall report</u> to the office of the President with the original of such certificate within one business day of receiving the same."

(Emphasis added.) The import of those quoted paragraphs is the crux of this appeal.

After undergoing additional physical therapy, Jackson underwent a "work status" examination by Dr. Jeffrey Davis on August 8, 2017. Based on Jackson's physical capabilities at the time, Dr. Davis recommended that he "rarely" be allowed to climb a ladder and specifically prohibited Jackson from using a ladder for more than 4.8 minutes during an 8-hour workday. He also recommended that Jackson not be required to climb stairs for more than 8 minutes during an 8-hour workday. Dr. Davis did not make any specific findings or recommendations as to Jackson's ability to kneel or squat. He also did not indicate whether he believed that Jackson should be allowed to return to work on either a part-time or a full-time basis.

After meeting with Dr. Davis, Jackson also went to his family physician, Dr. Beverly Jordan, for an evaluation. In a letter dated August

24, 2017, Dr. Jordan stated the following:

> "Patient Reddoch S. Jackson ... has been under my care from 02/03/2009 to 08/24/2017 and is able to return to work on 8/28/2017.
>
> "Restrictions are per work status form dated 8/8/17 by Dr. Jeffrey C. Davis -- can climb a ladder on a rare basis as long as he is able to support with his arms, cane, and stairs on a limited basis as long as he is able to utilize the handrail.
>
> "... I have reviewed his job description and his functional capacity exam and find him fit for duty."

Although Jackson knew that Dr. Jordan was not an orthopedic surgeon, he nevertheless submitted her letter, along with a copy of Dr. Davis's work-status form, to ESCC as proof that he was fit to return to work.

However, because Dr. Jordan's letter was not a "fit-for-duty" certificate from a treating orthopedic surgeon and because Dr. Davis's work-status form expressly prohibited Jackson from climbing a ladder for more than 4.8 minutes during an 8-hour workday and limited his ability to climb stairs to less than 8 minutes in an 8-hour workday, ESCC notified Jackson that he had failed to meet the requirements under the settlement agreement and asked him to resign. Jackson refused to do so.

As a result, on September 15, 2017, ESCC commenced the present action against Jackson in which it alleged a claim of breach of contract

and also sought both declaratory and injunctive relief. In its complaint, ESCC alleged that Jackson had breached the terms of the settlement agreement when he refused to tender his resignation after failing to provide a "fit-for-duty" certificate from a treating orthopedic surgeon on or before the August 31, 2017, deadline.

In his answer to ESCC's complaint, Jackson denied the allegations against him and asserted various affirmative defenses, including that he had complied with the terms of the settlement agreement when he provided ESCC with a copy of Dr. Davis's work-status form and Dr. Jordan's letter in which she approved him to return work. Because he claimed that he had provided the requisite documentation, Jackson contended that, under paragraph three of the settlement agreement, he had fulfilled his obligations and was, thus, not required to resign from his position. He also alleged several counterclaims against ESCC, including claims of breach of contract and fraud/mistake, and sought both declaratory and injunctive relief.

On January 9, 2018, after it had filed its answer to Jackson's counterclaims, ESCC filed a summary-judgment motion in which it argued that no genuine issue of material fact existed as to whether, per

the terms of paragraphs two and three of the settlement agreement, Jackson was required to resign from his position with ESCC in the event that he failed to provide a fit-for-duty certificate from a treating orthopedic surgeon on or before August 31, 2017, "allowing and/or releasing him to perform the essential functions of his job as Assistant Plant Supervisor including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations." According to ESCC, under general principles of contract interpretation, the plain and ordinary meaning of the terms in paragraphs two and three of the settlement agreement made clear that, to keep his job, Jackson had to produce a fit-for-duty certificate from a treating orthopedic surgeon on or before August 31, 2017. If he failed to do so, ESCC argued, Jackson agreed, in paragraph two of the settlement agreement, to resign from his position. If, however, he did do so, ESCC argued, Jackson, pursuant to paragraph three of the settlement agreement, would not have to resign.

ESCC noted that the only documentation that Jackson had submitted to it to show that he was fit to return to work was Dr. Davis's work-status form and Dr. Jordan's letter. Specifically, ESCC noted that

Dr. Davis's work-status form expressly prohibited Jackson from climbing a ladder for more than 4.8 minutes in an 8-hour workday; limited his ability to climb stairs to less than 8 minutes in an 8-hour workday; and made no findings as to Jackson's ability to squat or kneel. It further noted that Dr. Jordan's letter, although clearing him to return to work, was insufficient under the terms of the settlement agreement because it was undisputed that Dr. Jordan was not a "treating orthopedic surgeon." Under these circumstances, ESCC asserted that it was entitled to a summary judgment in its favor. In support of its summary-judgment motion, ESCC attached, among other things, a copy of the settlement agreement, the results of Jackson's FCE, a copy of Dr. Davis's work-status form, and a copy of Dr. Jordan's letter.

In his response to ESCC's summary-judgment motion, Jackson argued only the following:

> "Contrary to the position of [ESCC] in its motion for summary judgment, [ESCC] is not entitled to summary [judgment] as there indeed exists a genuine issue of material fact warranting submission of this case to the jury as fact finder. For this Court to grant summary judgment would be tantamount to its invading the province of the jury as there is a fact issue regarding [Jackson's] compliance with the parties' agreement that he timely provided [ESCC] with a 'Fit for Duty' Certificate from his treating physicians. Indeed, there exists a genuine issue of fact, a dispute by the parties as to

> whether what [Jackson] hand delivered to the Office of the President satisfied the parties' agreement, specifically whether [Jackson] provided a 'fit for duty certificate' in a timely manner as per the parties' agreement. Moreover, of paramount importance, [Jackson] submits that the parties' agreement was drafted by [ESCC] and Alabama law is well settled that if there is any dispute as to the meaning of its language and construing the same, the document must be construed against the scrivener and the trier of fact determines which competing meaning governs, construing the agreement against the drafting part. See FabArc Steel Supply, Inc. v. Composite Constr. Sys., Inc., 914 So. 2d 344, 357 (Ala. 2005); Birmingham News Co. v. Lynch, 797 So. 2d 440, 443 (Ala. 2001)."

In support of his response, Jackson attached, among other things, a copy of the settlement agreement and a copy of his affidavit in which he maintained that he had provided to ESCC the appropriate documentation demonstrating that he was fit to return to work.

Following a hearing on ESCC's summary-judgment motion, the trial court denied the motion.[1] Thereafter, the parties proceeded with conducting additional discovery.

On August 14, 2020, ESCC renewed its summary-judgment motion, reasserting the same arguments that it had made in its previous motion. Although ESCC attached to its renewed summary-judgment motion

---

[1]The transcript for that hearing was not included in the record on appeal.

many of the same exhibits that it had attached to its previous motion, it also attached a few new exhibits, including charts showing the various jobs and tasks that Jackson was required to perform with a ladder and the average amount of time he would need to spend on a ladder to complete each task. Each chart showed that Jackson would have to spend well above the restricted 4.8 minutes per 8-hour workday to complete each task.

On January 19, 2021, Jackson filed his response to ESCC's renewed summary-judgment motion in which he reasserted the same arguments that he had made in his response to ESCC's previous summary-judgment motion. In support of his response, Jackson attached many of the same exhibits that he had attached to his previous response.

On March 30, 2022, the trial court held a virtual hearing on ESCC's renewed summary-judgment motion. Following that hearing, the trial court issued an order granting ESCC's motion. In its order, the trial court stated:

> "The Court notes that summary judgment is appropriate only when 'there is no genuine issue as to any material fact and … the moving party is entitled to a judgment as a matter of law.' Rule 56(c)(3), Ala. R. Civ. P., and Dobbs v. Shelby County Econ. & Indus. Dev. Auth., 749 So. 2d 425 (Ala. 1999). '[W]here the evidence is in conflict, the issue must [be tried to

the fact-finder].' Kitchens v. Winn-Dixie Montgomery, Inc., 456 So. 2d 45, 47 (Ala. 1984).

"The undisputed facts show Mr. Jackson suffered injury while employed by ESCC. The parties entered into a written agreement that set forth conditions for Mr. Jackson to return to work and remain employed by ESCC. ESCC claims Mr. Jackson failed to meet the conditions set forth in the written agreement and his employment was terminated. Mr. Jackson claims the written agreement should be construed in a way that would show his employment should not be terminated.

"The only issue in dispute is whether the interpretation of the written agreement is a factual issue for the jury to decide or a legal issue for the Court to resolve. The construction of a written instrument is a function of the Court. Whether an agreement is ambiguous is a question of law for the trial court. When its terms are clear and certain, the Court, and not the jury, has the duty to determine the meaning of the agreement. See Bay Lines, Inc. v. Stoughton Trailers, Inc., 838 So. 2d 1013, 1018 (Ala. 2002), citing Terry Cove North, Inc. v. Baldwin County Sewer Authority, Inc., 480 So. 2d 1171, 1173 (Ala. 1985).

"Upon due consideration, it is hereby ORDERED, ADJUDGED, and DECREED that:

"1. [ESCC's] motion for summary judgment against [Jackson] is GRANTED.

"2. [Jackson's] objection is DENIED.

"3. The Court finds and declares that the agreement, as set for in the June 19, 2017, settlement agreement, is valid and enforceable.

"4. Court costs are taxed as paid.

"5. All other requests for relief are hereby DENIED."

About a month later, Jackson filed a timely postjudgment motion in which he sought to alter, amend, or vacate the trial court's order. That motion was denied by operation of law.

On September 15, 2022, Jackson filed a notice of appeal to the Alabama Court of Civil Appeals. That court transferred the appeal to this Court on the basis that it lacked subject-matter jurisdiction over Jackson's appeal.

Standard of Review

> "'"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d

> 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989).'"

"Prince v. Poole, 935 So. 2d 431, 442 (Ala. 2006) (quoting Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004))."

Brown v. W.P. Media, Inc., 17 So. 3d 1167, 1169 (Ala. 2009).

Additionally,

> ""[t]he question whether a contract is ambiguous is for a court to decide. State Farm Fire & Cas. Co. v. Slade, 747 So. 2d 293 (Ala. 1999). As long as the contractual terms are clear and unambiguous, questions of their legal effect are questions of law. Commercial Credit Corp. v. Leggett, 744 So. 2d 890 (Ala. 1999). Thus, we apply a de novo review to a trial court's determination of whether a contract is ambiguous and to a trial court's determination of the legal effect of an unambiguous contract term.
>
> ""...In this case, the trier of fact was the trial court, and the court heard ore tenus evidence.
>
> > ""'Where ore tenus evidence is presented to the trial court in a nonjury case, a judgment based on that evidence is presumed to be correct and will not be disturbed on appeal unless a consideration of the evidence and all reasonable inferences therefrom

> reveals that the judgment is plainly and palpably erroneous or manifestly unjust.'

> ""Bertolla v. Bill, 774 So. 2d 497, 503 (Ala. 1999) (quoted in Redden v. State, 804 So. 2d 196 (Ala. 2001))."'"

Black Warrior Mins., Inc. v. Fay, 82 So. 3d 650, 651-52 (Ala. 2011) (quoting SouthTrust Bank v. Copeland One, L.L.C., 886 So. 2d 38, 41 (Ala. 2003), quoting in turn Winkleblack v. Murphy, 811 So. 2d 521, 525-26 (Ala. 2001)).

Discussion

On appeal, Jackson contends that paragraphs two and three of the settlement agreement are ambiguous regarding what kinds of documentation could meet the "fit-for-duty-certificate" requirement in those paragraphs. As a result of this alleged ambiguity, Jackson, relying on the doctrine of contra proferentem, contends that the terms of the settlement agreement are due to be construed against the drafter -- ESCC -- and, thus, that a genuine issue of material fact exists as to whether the documentation that he provided to ESCC failed to satisfy that requirement, thereby requiring his resignation.

It is well settled that,

> "'[u]nder general Alabama rules of contract

> interpretation, the intent of the contracting parties is discerned from the whole of the contract. Where there is no indication that the terms of the contract are used in a special or technical sense, they will be given their ordinary, plain, and natural meaning. If the court determines that the terms are unambiguous (susceptible of only one reasonable meaning), then the court will presume that the parties intended what they stated and will enforce the contract as written. … Under those established rules of contract construction, where there is a choice between a valid construction and an invalid construction the court has a duty to accept the construction that will uphold, rather than destroy, the contract and that will give effect and meaning to all of its terms. See [Voyager Life Ins. Co. v. Whitson, 703 So. 2d 944] at 948-49 [(Ala. 1997)]; Sullivan, Long & Hagerty v. Southern Elec. Generating Co., 667 So. 2d 722, 725 (Ala. 1995).'"

Once Upon a Time, LLC v. Chappelle Props. LLC, 209 So. 3d 1094, 1097 (Ala. 2016) (quoting Homes of Legend, Inc. v. McCollough, 776 So. 2d 741, 746 (Ala. 2000)) (emphasis added). Additionally, this Court has previously stated:

> "Contract terms will not be construed against the party who framed them if other rules of construction would be thwarted in their legitimate operation by the application of that rule of construction. Denson v. Caddell, 201 Ala. 194, 77 So. 720, 722 (1917); G.F.A. Peanut Ass'n v. W.F. Covington Planter Co., 238 Ala. 562, 192 So. 502 (1939). '[T]he intention of the party to a contract controls its interpretation and ... to ascertain such intention, regard must be had to the subject matter, the relationship of the parties at the time of the contract, and the law which it is justly inferable they had in view while contracting.' G.F.A. Peanut Ass'n, 238 Ala. at 566, 192 So. at 506."

FabArc Steel Supply, Inc. v. Composite Constr. Sys., Inc., 914 So. 2d 344, 358 (Ala. 2005) (emphasis added).

"[I]f all other rules of contract construction fail to resolve the ambiguity, then, under the rule of contra proferentem, any ambiguity must be construed against the drafter of the contract." McCollough, 776 So. 2d at 746 (emphasis added). However,

> "'[t]he rule of contra proferentem is generally a rule of last resort that should be applied only when other rules of construction have been exhausted. 3 Arthur L. Corbin, Contracts § 559 at 268-69 (1962); see also Molton, Allen & Williams, Inc. v. St. Paul Fire & Marine Ins. Co., 347 So. 2d 95, 99 (Ala. 1977) (indicating that ambiguities must be interpreted against the party drawing the contract if the circumstances surrounding the contract do not make the terms clear).'"

FabArc Steel Supply, 914 So. 2d at 357-58 (quoting Lackey v. Central Bank of the South, 710 So. 2d 419, 422 (Ala. 1998)) (emphasis added).

As noted previously, under the terms of the settlement agreement, the parties, among other things, agreed to the following:

> "2. If Jackson is unable to secure from a treating orthopedic surgeon on or before August 31, 2017, a fit for duty certificate allowing and/or releasing him to perform the essential functions of his job as Assistant Plant Supervisor including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations, Jackson unconditionally and irrevocably agrees to resign his employment at Enterprise State effective August 31, 2017.

> Jackson shall submit a letter of resignation effective August 31, 2017, to the President of Enterprise State.
>
> "3. If Jackson secures a fit for duty certificate prior to August 31, 2017, allowing and/or releasing him to perform the essential functions of his job, including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations, he shall report to the office of the President with the original of such certificate within one business day of receiving the same."

(Emphasis added.)

In its renewed summary-judgment motion, ESCC argued that no genuine issue of material fact existed as to whether, per the terms of paragraphs two and three of the settlement agreement, Jackson was required to resign from his position with ESCC in the event that he failed to provide a fit-for-duty certificate from a treating orthopedic surgeon on or before August 31, 2017, "allowing and/or releasing him to perform the essential functions of his job as Assistant Plant Supervisor including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations." According to ESCC, under general principles of contract interpretation, the plain and ordinary meaning of the terms in paragraphs two and three of the settlement agreement made clear that, to keep his job, Jackson had to produce a fit-for-duty certificate from a treating orthopedic surgeon on or before

August 31, 2017. Thus, according to ESCC, there were two alternatives: (1) under paragraph two of the settlement agreement, if Jackson did not produce the agreed upon documentation, he would resign or (2) under paragraph three of the settlement agreement, if Jackson did produce such documentation, he would not be required to resign.

ESCC noted that the only documentation that Jackson had submitted to it to show that he was fit to return to work was Dr. Davis's work-status form and Dr. Jordan's letter. Specifically, ESCC noted that Dr. Davis's work-status form was not a "fit for duty certificate." Additionally, that form expressly prohibited Jackson from climbing a ladder for more than 4.8 minutes in an 8-hour workday, limited his ability to climb stairs to less than 8 minutes in an 8-hour workday, and made no findings as to Jackson's ability to squat or kneel. ESCC further noted that Dr. Jordan's letter, although clearing Jackson to return to work,[2] was insufficient under the terms of the settlement agreement because it was undisputed that Dr. Jordan was not a "treating orthopedic surgeon." Under these circumstances, ESCC asserted that it was entitled

[2]Although Dr. Jordan stated that Jackson was cleared to return to work, she expressly incorporated the restrictions placed by Dr. Davis, the orthopedic surgeon.

to a summary judgment in its favor.

In support of its motion, ESCC attached, among other things, a copy of the settlement agreement, the results of Jackson's FCE, a copy of Dr. Davis's work-status form, and a copy of Dr. Jordan's letter. It also attached charts showing the various jobs and tasks that Jackson was required to perform with a ladder and the average amount of time he would need to spend on a ladder to complete each task. Each chart showed that Jackson would have to spend well above the restricted 4.8 minutes per 8-hour workday to complete each task.

The arguments and evidence set forth in ESCC's summary-judgment motion demonstrated that Jackson had breached the terms of the settlement agreement after he refused to resign his position after failing to produce any documentation showing that he was fit to return to work. Thus, the burden then shifted to Jackson to demonstrate that a genuine issue of material fact existed in this case.

Jackson contends that an ambiguity exists regarding what kinds of documentation could meet the "fit-for-duty-certificate" requirement in paragraphs two and three of the settlement agreement. According to Jackson, although he submitted documentation from both Dr. Davis and

Dr. Jordan before August 31, 2017, which, he said, indicated that he was fit to return to work, ESCC prohibited him from doing so and tried to make him resign from his position. Because an apparent ambiguity exists in paragraphs two and three of the settlement agreement, Jackson contends, we should apply the doctrine of contra proferentem and construe those paragraphs against the drafter -- here, ESCC.

We note, however, that neither Jackson nor ESCC argue that the terms of either paragraph two or paragraph three of the settlement agreement are used in a special or technical sense. We will thus give the terms in those paragraphs their "'ordinary, plain, and natural meaning'" and will "'presume that the parties intended what they stated and will enforce the contract as written.'" Once Upon a Time, 209 So. 3d at 1097 (quoting McCollough, 776 So. 2d at 746). Reading the terms of paragraphs two and three in context and giving those terms their "'ordinary, plain, and natural meaning,'" we conclude that those paragraphs are "'susceptible of only one reasonable meaning.'" Once Upon a Time, 209 So. 3d at 1097 (quoting McCollough, 776 So.2d at 746).

On the one hand, paragraph two makes clear that if Jackson was unable to obtain "from a treating orthopedic surgeon on or before August

31, 2017, a fit for duty certificate allowing and/or releasing him to perform the essential functions of his job as Assistant Plant Supervisor including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations," then he "unconditionally and irrevocably agree[d] to resign his employment" with ESCC. On the other hand, paragraph three makes clear that if Jackson managed to secure the requisite documentation by August 31, 2017, then he could "report to the office of the President with the original of such certificate within one business day of receiving the same."

The record indicates that the only documentation that Jackson submitted to ESCC to show that he was fit to return to work was Dr. Davis's work-status form and Dr. Jordan's letter. It is undisputed that Dr. Davis's work-status form expressly prohibited Jackson from climbing a ladder for more than 4.8 minutes in an 8-hour workday; limited his ability to climb stairs to less than 8 minutes in an 8-hour workday; and made no findings as to Jackson's ability to squat or kneel. It is also undisputed that all of those activities, especially ladder climbing, are essential functions of Jackson's job as the "Assistant Plant Supervisor" for ESCC. Additionally, although Dr. Jordan expressly cleared Jackson

to return to work in her August 24, 2017, letter, that letter was nevertheless insufficient to meet the documentation requirements under the settlement agreement because it is undisputed that Dr. Jordan was not a "treating orthopedic surgeon."

Based on the foregoing, we see no evidence of ambiguity here. The "'ordinary, plain, and natural meaning'" of paragraphs two and three in the settlement agreement make clear what was required of Jackson for him to retain his position as the "Assistant Plant Supervisor" for ESCC. Therefore, contrary to Jackson's argument on appeal, the doctrine of contra proferentem -- a doctrine of last resort that should be used only when "all other rules of contract construction fail" -- is inapplicable here. McCollough, 776 So. 2d at 746.

Applying the unambiguous terms of those paragraphs to the facts before us, we see no reason to grant Jackson relief here. Jackson failed to "secure from a treating orthopedic surgeon on or before August 31, 2017, a fit for duty certificate allowing and/or releasing him to perform the essential functions of his job as Assistant Plant Supervisor including, but not limited to, ladder climbing, stair climbing, kneeling and squatting with or without reasonable accommodations." Accordingly, under

paragraph two of the settlement agreement, Jackson was required to resign from his position as the "Assistant Plant Supervisor" for ESCC. By failing to do so, Jackson breached the settlement agreement. Under these circumstances, the trial court properly entered a summary judgment in favor of ESCC.

## Conclusion

Because Jackson failed to demonstrate that the relevant terms of the settlement agreement were ambiguous and that a genuine issue of material fact existed as to whether he had breached the settlement agreement by failing to resign from his position after he did not produce the agreed-upon documentation showing that he was fit to return to work, the trial court's summary judgment in favor of ESCC is affirmed.

AFFIRMED.

Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.