

Rel: March 29, 2024

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

OCTOBER TERM, 2023-2024

SC-2023-0806

Ex parte Kenneth G. Hood

PETITION FOR WRIT OF MANDAMUS

**(In re: Joan Dudley Hood, individually and on behalf of
Broadview Properties Family Limited Partnership**

v.

**Kenneth G. Hood and Broadview Properties Family Limited
Partnership)**

(Lee Circuit Court: CV-23-900114)

SELLERS, Justice.

Kenneth G. Hood ("the husband") petitions this Court for a writ of mandamus directing the Lee Circuit Court to dismiss the derivative claims asserted by Joan Dudley Hood ("the wife") on behalf of Broadview Properties Family Limited Partnership ("the partnership") and to enter a protective order prohibiting discovery into those claims. For the reasons stated below, we deny the petition.

I. Facts as Alleged in the First Amended Complaint

The husband and the wife are in the midst of a divorce. The wife commenced the underlying action individually and derivatively on behalf of the partnership, alleging, in relevant part, that the husband had used the partnership as a means to improperly hide and transfer marital assets.¹ The wife alleges the following in the first amended complaint: In January 2006, the husband formed the partnership, listing himself as the sole general and limited partner. In 2012, the husband amended the partnership agreement to transfer ownership interests in the partnership to his three sons. As a result of that amendment, the

¹In this mandamus proceeding, the husband challenges only the derivative claims asserted on behalf of the partnership. He argues that those claims should be dismissed because, he says, the wife has never been a partner of the partnership and, therefore, has no right to enforce the rights of the partnership.

membership interests in the partnership were as follows: the husband, general partner (3%); Phillip Kenneth Hood, limited partner (32 1/3%); Keith Vinson Hood, limited partner (32 1/3%); and Garrett Dudley Hood, limited partner (32 1/3%). In February 2019, Garrett died intestate and the Lee Probate Court entered an order requiring the personal representative of his estate to distribute the estate assets equally to the husband and the wife. The personal representative executed an "assignment of limited partnership units," transferring "any and all rights to the thirty-two and one-third (32 1/3) Limited Partnership Units in the Partnership owned by the Estate" equally to the husband and the wife. That assignment lists both the husband and the wife as limited partners, reflecting that each owned 16 1/6 partnership units. Around that same time, the husband executed an "assignment of limited partnership units," transferring to the wife the 16 1/6 partnership units that he had been assigned from Garrett's estate. That assignment also lists the wife as a limited partner, reflecting that, as a result of the assignment, she owned 32 1/3 partnership units. After execution of the second assignment, the husband led the wife to believe that she held a 32 1/3% interest in the partnership. Since 2020, the partnership's

accountant has distributed K-1 federal tax forms to the wife, listing her as a limited partner and stating her share of any profit, loss, and capital was 32.33%. In June 2022, the wife requested access to the partnership's records based on her belief that the partnership was being mismanaged; she was denied access to the records. In January 2023, representatives of the wife met with the accountant for the husband and numerous entities owned and/or controlled by the husband. At that meeting, the husband's accountant stated that the husband had taken funds from the partnership without approval and/or documentation and had loaned that money to various third parties. The complaint also describes other examples of alleged mismanagement on the part of the husband with regard to the unauthorized or improper transfer of partnership assets. On March 2, 2023, the wife sent the partners a letter, demanding that they render an accounting and that they institute an action within seven days to enforce the rights of the partnership. After receiving no response to her demand, the wife commenced the underlying action.

II. Proceedings in the Trial Court

The husband filed a Rule 12(b)(6), Ala. R. Civ. P., motion to dismiss, arguing, in relevant part, that neither of the two assignments

transferring partnership units to the wife was a transfer of a full limited-partnership interest.² He asserted that the first transfer of partnership units from Garrett's estate was "at most" the transfer of a "transferable interest" from a "dissociated limited partner," which, he said, did not confer upon the wife any rights to participate in the management or affairs of the partnership; instead, he said, the wife was entitled only to distributions from the partnership. The husband then argued that, when he "purported" to transfer to the wife the 16 1/6 partnership units he had inherited from Garrett's estate, he could not have "unilaterally" admitted her as a limited partner because, he said, he had also held only a "transferable interest" in those partnership units. In support of those

²Some of the exhibits included with the husband's mandamus petition were either attached to the complaint or referenced in the complaint and are central to the claims therein, including, among other documents, the Lee Probate Court's order for final settlement of Garrett's estate, the two assignments, the partnership agreement, the demand letter to the partners, and the tax documentation. See Rule 10(c), Ala. R. Civ. P. ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."). Accordingly, the trial court's consideration of those documents did not convert the husband's motion to dismiss into a motion for a summary judgment, pursuant to Rule 56(c), Ala. R. Civ. P. Moreover, as explained herein, the transcript of the September 2023 hearing on the motion to dismiss and motion for protective order confirm that the trial court did not convert the motion to dismiss into a motion for a summary judgment.

arguments, the husband quoted various provisions of the Alabama Limited Partnership Law ("the ALPL"), Ala. Code 1975, § 10A-9A-1.01 et seq., regarding transfers, transferable interests, restrictions upon transferable interests, and dissociation of limited partners. Finally, the husband argued that, pursuant to the partnership agreement, the wife could be admitted as a limited partner in the partnership only by the "unanimous consent" of all the partners and that she had not alleged in the complaint that all the partners had unanimously approved her as a limited partner.

In response to the motion to dismiss, the wife argued that her status as a limited partner devolved upon her by operation of law pursuant to the laws of intestate succession and in accordance with the Lee Probate Court's order regarding the settlement of Garrett's estate. She further claimed that her partnership units increased when the husband, the sole general partner, assigned to her the 16 1/16 partnership units that he had inherited from Garrett's estate. The wife stated that, to the extent that the husband had argued that the two assignments were not in compliance with the partnership agreement, such argument would be meritless because, she said, the actions of a general partner are binding

on the partnership. Finally, the wife argued that the husband's course of conduct revealed that she had been a limited partner of the partnership since December 2019. Finally, the wife asserted that the provisions of the ALPL referred to by the husband regarding a dissociated limited partner did not control because, she said, the partnership agreement governed what occurs upon a limited partner's death.

The trial court held two hearings in this case, one on August 23, 2023, and one on September 27, 2023.³ At the latter hearing, the trial court heard arguments on the motion to dismiss and the husband's motion for a protective order seeking to prohibit discovery into the wife's derivative claims; the transcript of that hearing is included as Exhibit 16

³After this Court ordered answers and briefs, the trial judge presiding over the case filed a motion requesting that this Court order the husband to supplement the record to include the transcript of the August 23, 2023, hearing, which, he indicated, included the "majority" of the information and arguments regarding the motion to dismiss. This Court granted that motion, giving the husband until February 27, 2024, to supplement the record; the husband did not respond. See Rule 21(a)(1)(F), Ala. R. App. P. (noting, in relevant part, that the petition for a writ of mandamus shall contain an appendix including "all parts of the record that are essential to understanding the matters set forth in the petition ... and any transcripts of proceedings that resulted in the order or orders").

to the mandamus petition. During that hearing, the trial judge orally indicated that the wife had met her burden of pleading to survive a Rule 12(b) dismissal. The trial judge made clear, however, that he was not making a decision regarding whether the wife was a limited partner. Rather, he explained that there were "too many [disputed] facts" and submissions -- i.e., that the husband did not "have enough to fight." The trial judge further indicated that such an attack on the wife's status as a limited partner was better reserved for the summary-judgment stage of the proceedings. The trial court thereafter entered an order denying the motion to dismiss; it made no express ruling on the motion for a protective order. This mandamus proceeding followed.

III. 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).

Mandamus review is the proper method by which to review whether a party has satisfied the pleading requirements for a derivative claim. Ex

parte 4tdd.com, Inc., 306 So. 3d 8, 18 (Ala. 2020). This Court reviews a dismissal under Rule 12(b)(6), Ala. R. Civ. P., de novo. Cathedral of Faith Baptist Church, Inc. v. Moulton, 373 So. 3d 816, 818 (Ala. 2022). "A dismissal for failure to state a claim upon which relief can be granted is warranted only when the allegations of the complaint, viewed most strongly in favor of the pleader, demonstrate that the pleader can prove no set of facts that would entitle the pleader to relief." Id. Finally, a trial court's denial of a protective order in response to discovery requests is an appropriate basis for mandamus review. Ex parte Loube Consulting Int'l, Inc., 45 So. 3d 741 (Ala. 2010). "[M]andamus will issue to reverse a trial court's ruling on a discovery issue only (1) where there is a showing that the trial court clearly exceeded its discretion, and (2) where the aggrieved party does not have an adequate remedy by ordinary appeal." Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003).

IV. Analysis

A. Clear Legal Right to Dismissal of the Derivative Claims

The husband argues that he has a clear legal right to the dismissal of the derivative claims the wife has asserted on behalf of the partnership because, he says, the wife has never been a partner of the partnership;

thus, he argues, she lacks "standing" to enforce the rights of the partnership. The husband seeks mandamus review based on Ex parte 4tdd.com, 306 So. 3d at 18 (holding that "mandamus relief is available when it is demonstrated that a shareholder plaintiff in a derivative action, in which the corporation is the real party in interest, has not complied with the heightened pleading requirements of Rule 23.1[, Ala. R. Civ. P.]").⁴ The husband points out the rationale stated in Ex parte 4tdd.com for granting mandamus review:

"[I]t would appear that Rule 23.1 logically requires a threshold determination, and an avenue for mandamus review, as to whether the derivative action may be maintained by the plaintiff before any decision is made regarding whether to proceed toward litigation on the merits. There is no procedure for appealing from a wrongful determination of that issue before the entry of a final

⁴Notably, the husband has stated throughout these proceedings that the wife lacked "standing" to sue derivatively on behalf of the partnership. However, in Ex parte 4tdd.com, the case upon which he relies, this Court clarified that

"questions pertaining to the heightened pleading requirements of Rule 23.1 do not invoke the plaintiff's standing to bring the substantive claims and do not implicate the trial court's subject-matter jurisdiction; rather, Rule 23.1 imposes a procedural bar on a derivative action when the plaintiff fails to [comply with the pleadings requirements of Rule 23.1]."

306 So. 3d at 16.

judgment on the merits. In other words, the only alternative to mandamus review would be for the corporation whose rights are at issue to appeal after a final judgment has been entered on the merits. Such an appeal obviously is not adequate to protect the corporation's right to prevent the maintenance of a derivative action by one who does not fairly and adequately represent the interests of the shareholders because the action will have been maintained by the time the corporation can file an appeal. To hold that the review of that issue must await a determination of the merits would defeat the very right Rule 23.1 is designed to protect, namely the right to prevent the maintenance of litigation on behalf [of] the corporation by a plaintiff who does not 'fairly and adequately represent the interests of the shareholders' of the corporation."

306 So. 3d at 17.

To begin, we note that, although Rule 23.1, Ala. R. Civ. P., applies specifically to the pleading requirements in shareholder derivative actions,⁵ the ALPL contains similar, if not identical, pleading

⁵Rule 23.1, Ala. R. Civ. P., requires, in relevant part, that a plaintiff suing derivatively on behalf of a corporation must (1) allege that he or she was a shareholder of the corporation at the time of the alleged offense or that his or her status as a shareholder thereafter devolved upon him or her by operation of law and (2) allege "with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires ... and the reasons for the plaintiff's failure to obtain the action or for not making the effort." Rule 23.1 further provides that a derivative action "may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."

requirements. Section 10A-9A-9.03, Ala. Code 1975, provides that only a partner may sue "in the right of [a] limited partnership":

"A partner may commence or maintain a derivative action in the right of the limited partnership only if the partner:

"(1) fairly and adequately represents the interests of the limited partnership in enforcing the right of the limited partnership; and

"(2) either:

"(A) was a partner of the limited partnership at the time of the act or omission of which the partner complains; or

"(B) whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the act or omission of which the partner complains."

Section 10A-9A-9.04, Ala. Code 1975, provides that a partner may commence a derivative action "in the right of [a] limited partnership" if "(a) the partner first makes a written demand upon general partners requesting that they cause the limited partnership to bring an action to enforce the right and the general partners do not bring the action within a reasonable time" or "(b) a demand under subsection (a) would be futile." The Alabama Comment to § 10A-9A-9.04 states that this section is

derived from, among other sources, Rule 23.1, Ala. R. Civ. P. Finally, § 10A-9A-9.05, Ala. Code 1975, states that, in a derivative action, the complaint "must state with particularity" "(a) the date and content of plaintiff's demand and the general partner's response by the limited partnership to the demand" or "(b) why the demand should be excused as futile."

In his mandamus petition, the husband challenges only the wife's status as a limited partner in the partnership. § 10A-9A-9.03. Accordingly, we will address whether the wife has alleged sufficient facts to demonstrate that she is a proper party to enforce the rights of the partnership. § 10A-9A-9.03. Under the applicable standard of review, we must accept the wife's factual allegations as true and draw all reasonable inferences in her favor. Moulton, 373 So. 3d at 818. As indicated, the first amended complaint alleges that Garrett, a limited partner owning $32 \frac{1}{3}$ partnership units, died intestate and that the personal representative of his estate executed an assignment transferring his partnership units equally to the husband and the wife, each receiving $16 \frac{1}{6}$ partnership units. The complaint further alleges that the husband thereafter executed an assignment transferring to the wife the $16 \frac{1}{16}$

partnership units that he had inherited from Garrett's estate. Both assignments refer to the wife as a "limited partner" and reflect the "number of limited partnership units [that she] owned." The complaint then alleges that, following the second assignment, the husband led the wife to believe that she held a 32 1/3% interest in the partnership. The complaint further asserts that, since 2020, the wife has received federal K-1 tax forms. Those forms also reference the wife as a limited partner. Finally, although not challenged, the allegations of the complaint make clear that the wife complied with the demand requirements of the ALPL before commencing the underlying action. Based on the materials before us, we conclude that the trial court properly denied the husband's Rule 12(b)(6) motion to dismiss. The allegations of the complaint, if taken as true, do not foreclose the possibility that the wife may possibly prevail in demonstrating that she is a proper person to enforce the rights of the partnership. As the trial court noted, there are too many disputed facts regarding the wife's status as a limited partner. We would further note that the facts are also disputed or at least not fully developed regarding what actually happens to a limited partner's partnership units if that partner dies. See § 10A-9A-1.08(a)(1), Ala. Code 1975 (noting that "the

partnership agreement governs relations among the partners as partners and between the partners and the partnership"), and § 10A-9A-1.08(a)(2) (noting that, "to the extent the partnership agreement does not otherwise provide for a matter described in subsection (a)(1)," the ALPL governs). Accordingly, the husband has not demonstrated a clear legal right to the dismissal of the derivative claims at this juncture in the litigation.

B. Clear Legal Right to a Protective Order

The husband also asserts that he has a clear legal right to a protective order prohibiting discovery into the derivative claims. Given the procedural posture of the case, we disagree. The materials before us indicate that, after the parties were unable to resolve the discovery disputes, the wife filed a motion to compel responses to her first set of interrogatories and the production of documents; the trial court granted that motion. On August 22, 2023, the husband moved the trial court for a protective order seeking to prevent discovery into the derivative claims, arguing that the wife did not have the right to sue derivatively to enforce the rights of the partnership. The transcript of the September 2023 hearing on the motion to dismiss and the motion for a protective order indicates that, after the trial judge orally denied the husband's motion to

dismiss, the trial judge stated that it was his understanding that there were pending discovery issues that the parties were going to work on going forward. At that point, the wife's attorney stated that, to the extent that the wife still had a pending motion to compel, he "would withdraw" it. The trial judge responded that, because he did not know whether the wife was a limited partner, he was not giving her "everything" she wanted in terms of discovery. The trial judge then stated that he would like the parties to work out the discovery issues without court intervention; otherwise, he said, the court would get involved. In other words, the transcript reflects that the wife agreed to withdraw her motion to compel; that the trial court suggested that the parties work out the discovery issues without court intervention; and that the husband never objected to that suggestion, thus impliedly agreeing to proceed with discovery. Notably, following the September 2023 hearing, the trial court entered an order denying the husband's motion to dismiss; it made no ruling on his motion for a protective order. Because the husband impliedly agreed to move forward with discovery and because he presumably did not ask the trial court for an express ruling on his motion for a protective order, we cannot say that the trial court had an imperative duty to perform,

accompanied by a refusal to do so. See Ex parte Oliver, 864 So. 2d 1064, 1067 (Ala. 2003) ("This Court will not direct a court to take some action it has not previously refused to take."). For the above-stated reasons, the husband has not demonstrated a clear legal right to a protective order.

V. Conclusion

Based on the foregoing, the husband has demonstrated neither a clear legal right to have the derivative claims asserted on behalf of the partnership dismissed nor a clear legal right to a protective order. Thus, we deny the petition for a writ of mandamus.

PETITION DENIED.

Wise, Bryan, Mendheim, Stewart, and Cook, JJ., concur.

Mitchell, J., dissents in part and concurs in the result in part, with opinion, which Shaw, J., joins.

Parker, C.J., dissents.

MITCHELL, Justice (dissenting in part and concurring in the result in part).

In my view, the central issue presented in this mandamus petition -- whether Joan Dudley Hood ("the wife") is entitled to sue on behalf of Broadview Properties, FLP -- is a legal question. The main opinion concludes that we cannot resolve that question because, it says, "there are too many disputed facts," ___ So. 3d at ___, but the main opinion does not identify any disputed facts, nor does it explain how those facts could affect our resolution of the question.

Respectfully, I believe that existing law, as applied to the undisputed facts before us, clearly establishes that the wife lacks the ability to bring derivative claims on behalf of Broadview. I would therefore grant the petition to the extent that it seeks an order directing the trial court to dismiss those claims and deny the remainder of the petition (which relates to discovery issues surrounding those claims) as moot.

Facts and Procedural History

The facts in this case are complicated but, in relevant part, undisputed. Kenneth Hood ("the husband") and his three sons -- Phillip

("the first son"), Keith ("the second son"), and Garrett ("the third son") -- were partners in a family limited partnership called Broadview Properties, FLP, which had the following structure:

The husband: general partner with a 3% ownership interest;

The first son: limited partner with a $32 \frac{1}{3}\%$ ownership interest;

The second son: limited partner with a $32 \frac{1}{3}\%$ ownership interest; and

The third son: limited partner with a $32 \frac{1}{3}\%$ ownership interest.

In 2019, the third son died without a will and left behind no spouse or children. His assets were distributed according to the normal rules of intestate succession, which meant that his interest in Broadview was split equally between his two parents, the husband and the wife, with each of them getting a $16 \frac{1}{6}\%$ interest.

The husband immediately transferred his $16 \frac{1}{6}\%$ interest to the wife and stated that this transfer made the wife a "limited partner" with a $32 \frac{1}{3}\%$ partnership interest. The wife has been treated as a limited partner of Broadview for tax purposes (and seemingly all other purposes) ever since.

But, not long after this transfer, difficulties arose in the husband and wife's marriage, which eventually led the wife to file for divorce. The wife represents that, during the course of the divorce proceedings, she came to believe that her husband was using Broadview as means to improperly hide and transfer marital assets. In 2022, she attempted to investigate this concern by requesting access to Broadview's records. After those requests were denied, she filed this suit, both individually and derivatively as a minority owner of Broadview. She asserted individual claims for declaratory judgment, constructive trust, and fraud and derivative claims for breach of contract and fraud. She also filed a motion seeking to compel production of various documents and information.

The husband and Broadview moved to dismiss the wife's derivative claims because, they said, she lacked statutory "standing" to sue on behalf of Broadview.⁶ In particular, they argued that the wife could not

⁶The parties have used the term "standing" to describe the authority to bring a derivative action, but that loose use of the term -- while once commonplace -- has fallen out of favor. As this Court explained in Ex parte 4tdd.com, Inc., 306 So. 3d 8, 16 (Ala. 2020) "questions pertaining to the heightened pleading requirements of Rule 23.1[, Ala. R. Civ. P.,] do not invoke the plaintiff's standing" -- in the ordinary, jurisdictional sense -- but, "rather, Rule 23.1 imposes a

sue because she is not, and never has been, a limited partner of Broadview -- instead, they argued, she is a mere transferee. And under Alabama law, they argued, only partners are permitted to file claims on the partnership's behalf.

A few days later, the wife filed a motion in the trial court seeking to compel responses to her requests for production and interrogatories, and the trial court granted that motion before the husband had a chance to oppose it. The trial court's order required the husband to answer the wife's requests for production and interrogatories within 10 days.

The next day, the husband filed a motion for protective order, effectively seeking to undo the trial court's earlier ruling and prevent his wife from obtaining discovery. The trial court held a hearing, in which it stated that it was planning to deny the motion to dismiss and in which it directed the parties to work out the discovery issues on their own. Shortly thereafter, the trial court entered an order denying the motion to dismiss, but it made no ruling on (and did not mention) his motion for protective order.

procedural bar on a derivative action" when the plaintiff fails to comply with the pleading requirements of that rule. 306 So. 3d at 16.

The husband then filed this petition for a writ of mandamus, asking us to (1) direct the trial court to dismiss the wife's derivative claims in the proceeding below and (2) enter a protective order prohibiting discovery into those claims.

Analysis

The first and primary question is whether the wife qualifies as a limited partner of Broadview, empowered to sue on its behalf. Under Alabama statutory law and the terms of Broadview's partnership agreement, the answer to that question is no. In the alternative, the wife argues that the husband has either waived Broadview's ability to challenge her partnership status or is equitably estopped from challenging it. Those arguments are foreclosed by statute and by this Court's precedents. Accordingly, the husband has demonstrated a clear legal right to dismissal of the wife's derivative claims.

A. The Wife is Not a Limited Partner

The wife's ability to sue on behalf of Broadview turns on whether she is a "partner" of Broadview or, instead, merely a "transferee." That is because both the Alabama Limited Partnership Law, § 10A-9A-1.01 et seq., Ala. Code 1975, and our rules of civil procedure provide that only "a

partner" can commence or maintain a derivative action on behalf of a limited partnership. § 10A-9A-9.03, Ala. Code 1975; Ala. R. Civ. P. 23.1. A mere transferee has no such authority.

To understand which of those two labels applies to the wife's interest in Broadview, we must look to Alabama statutory law. Section 10A-9A-1.02(7)(A)(i), Ala. Code 1975, defines a "limited partner" as someone who has been "admitted as a limited partner under Section 10A-9A-3.01." There are only four ways to become admitted as a limited partner under § 10A-9A-3.01, Ala. Code 1975: (1) as provided in the partnership agreement; (2) as the result of a conversion or merger; (3) with the consent of all partners; or (4) when there are no remaining partners and certain triggering conditions are met. A "transferee," by contrast, is defined as "a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner." § 10A-9A-1.02(15). A "transferable interest" is "a partner's right to receive distributions from a limited partnership" -- in other words, the right to receive money. § 10A-9A-1.02(14). But unlike a limited partner, a mere transferee is not entitled to "participate in the management" of

the partnership or to "access ... information concerning the partnership's activities and affairs." § 10A-9A-7.02(a)(4)(A) and (B), Ala. Code 1975.

Based on the undisputed facts before us, the wife has not satisfied any of the four avenues for becoming a limited partner set out in § 10A-9A-3.01: (1) she is not and never has been named as a partner in Broadview's partnership agreement;⁷ (2) she did not join or acquire Broadview by way of a conversion or merger; (3) she never obtained the "consent of all partners"; and (4) Broadview has other remaining partners (namely, the husband and the first two sons).

But the wife attempts to get around this problem by arguing that there is an unlisted fifth way to acquire partnership status: inheritance

⁷The wife concedes that she is not named in Broadview's partnership agreement, but briefly argues that the terms of the agreement implicitly authorized her to become a partner after the third son's death. This argument is unavailing. She relies on § 12.03 of the partnership agreement, which says that, upon a partner's death, the partner's estate "shall sell his or its Partnership Unit(s) to the Partnership as provided in this agreement." But that provision simply provides that a deceased partner's estate is required to provide Broadview the option to purchase back the decedent's partnership units -- an option which, everyone agrees, Broadview did not exercise here. Section 12.03 says nothing about what happens if Broadview chooses not to exercise its buyback rights and does not suggest that the deceased partner's estate can sell or transfer "limited partner" status in the absence of a buyback agreement.

or transfer. In particular, she contends that she first became a limited partner when she inherited the third son's partnership interest after his death and that she acquired additional partnership status when the husband gave her his portion of their son's partnership interest.

The wife's theory is foreclosed by the Alabama Limited Partnership Law. Under that law, when a limited partner dies, he "disassociates" from the partnership. Ala. Code 1975, § 10A-9A-6.01(b)(5). The deceased partner's heirs can inherit his "transferrable interest" in the partnership, but they cannot inherit his status or "capacity as a limited partner." Ala. Code 1975, § 10A-9A-6.02(a)(3) (emphasis added). The only way to receive that status or capacity is by satisfying one of the four criteria listed in § 10A-9A-3.01 -- which, as discussed above, the wife has not done.

The upshot here is that the third son could not transfer (and the wife could not inherit) his status as a limited partner. All he could transfer was his "transferrable interest" in Broadview -- i.e., his right to receive distributions. The same is true for the husband. When the husband gave away his share of the ownership interest that he had inherited from the third son, all that he inherited (and all that he could

pass on) was the transferrable interest, not the third son's status of being a limited partner.

B. The Wife Did Not Acquire De Facto Limited-Partnership Status Through Waiver or Estoppel

The wife next raises two fallback arguments, both of which fail. First, she argues that the husband -- by treating her as a limited partner in the past -- waived Broadview's ability to challenge her claimed partnership status. She rests this argument on the text of § 10A-9A-4.02(a), Ala. Code 1975, which provides:

"Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a writing in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under Section 10A-9A-1.03(d) that the general partner lacked authority."

(Emphasis added.) According to the wife, this provision establishes that when the husband agreed to treat her as a limited partner, he "bound the limited partnership" to that position.

But this argument, like her earlier ones, runs headlong into statutory text. That is because even if we assume that a partnership's internal management agreements fall within the scope of § 10A-9A-4.02(a) (a question about which I have serious doubts), the wife would still be ineligible to claim waiver under that section because she knew or should have known that "the general partner [her husband] lacked authority" to unilaterally confer partnership status.

Under governing law and the terms of Broadview's partnership agreement, the general partner plainly lacked power to admit an additional limited partner without the unanimous consent of all the other partners. See § 10A-9A-3.01; Broadview Agreement Art. X (specifying that no new limited partner can be admitted "without the unanimous consent of all the Partners" and that "[a]ny admission of any Additional Limited Partner in violation of this Article shall be null and void and of no force and effect whatsoever"). The wife had notice of both Alabama law and the terms of Broadview's agreement. See Ex parte Hicks, 153 So. 3d 53, 65 (Ala. 2014) ("'All persons are presumed to know the law.'" (citation omitted)). She therefore had either actual or constructive knowledge that the husband could not unilaterally make her a limited

partner. As a result, she is not eligible to take advantage of § 10A-9A-4.02(a)'s safe harbor.

The wife's second and final fallback argument is that the husband is equitably estopped from arguing that she is not a partner. She emphasizes that she has consistently been treated as a limited partner for tax purposes and that her husband -- both in the years prior to this lawsuit and in his initial discovery responses -- referred to her as a limited partner.

While this type of conduct would ordinarily present a strong case for estoppel, our Court has consistently held that, "among the parties to a partnership, membership cannot be acquired by estoppel." Steele v. Rosenfeld, LLC, 936 So. 2d 488, 495 (Ala. 2005) (emphasis omitted); see also Vergos v. Waterman Bldg. P'ship, 613 So. 2d 383, 389 (Ala. 1993) (explaining that this Court has long "held that a partnership 'is never established by implication or operation of law, at least in the situation where the dispute concerning the existence of a partnership is between the parties'" (citation omitted)). The wife has not challenged our caselaw on this point or asked us to overrule it. Accordingly, those precedents control here, and they squarely foreclose her equitable-estoppel theory.

Conclusion

The wife is not a limited partner of Broadview and cannot sue on its behalf. Respectfully, the Court should grant the husband's petition for a writ of mandamus to the extent that it asks us to direct to the trial court to dismiss the wife's derivative claims. We should deny as moot the remainder of the petition, which relates to discovery issues surrounding those claims.

Shaw, J., concurs.