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# **SUPREME COURT OF ALABAMA**

**OCTOBER TERM, 2023-2024**

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**SC-2023-0815**

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**Ex parte Musa Properties, LLC**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: R.K. Allen Oil Company, Inc.)**

**v.**

**Musa Properties, LLC)**

**(Calhoun Circuit Court: CV-22-900138)**

MITCHELL, Justice.

Musa Properties, LLC ("Musa"), asks us to enforce the writ of mandamus that we issued in Ex parte Musa Properties, LLC, [Ms. SC-2022-1061, May 19, 2023] \_\_\_ So. 3d \_\_\_ (Ala. 2023). But after Musa filed this mandamus petition, the Calhoun Circuit Court complied with our decision in Musa and granted Musa the relief it requested. We therefore dismiss Musa's petition as moot.

#### Facts and Procedural History

In May 2021, Musa contracted to buy a gas station and convenience store from R.K. Allen Oil, Inc. ("Allen Oil"). Musa, \_\_\_ So. 3d at \_\_\_. Their agreement fell apart after the two parties disagreed on how to respond to a letter from the Alabama Department of Environmental Management. Id. at \_\_\_.

Allen Oil then sued Musa in the Calhoun Circuit Court seeking specific performance of their agreement.<sup>1</sup> Musa filed an answer and asserted counterclaims, including its own claim for specific performance. That same day, Musa filed a lis pendens notice on the property with the

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<sup>1</sup>Allen Oil eventually withdrew its specific-performance claim and instead asserted a breach-of-contract claim. Musa, \_\_\_ So. 3d at \_\_\_.

Calhoun Probate Court. Id. at \_\_\_; see § 35-4-131(a), Ala. Code 1975 (directing probate judges to record notice in the lis pendens record that there is litigation concerning the land). On Allen Oil's motion, the circuit court entered partial summary judgment for Allen Oil and an order expunging the lis pendens notice. Musa, \_\_\_ So. 3d at \_\_\_\_. Musa petitioned this Court for a writ of mandamus directing the circuit court to vacate its expungement order, which we granted. Id. at \_\_\_\_.

After this Court's decision, Musa filed a motion to vacate the order expunging the lis pendens notice, a motion to reconsider the partial summary judgment, and a motion to quash a subpoena. Allen Oil, meanwhile, filed a motion to compel Musa to produce documents. The circuit court denied Musa's motions to reconsider and quash and granted Allen Oil's motion to compel. Musa then moved for a protective order, which the circuit court denied. All the while, the circuit court failed to act on Musa's motion to vacate the expungement order.

Musa petitioned this Court for a writ of mandamus directing the circuit court to vacate its discovery orders and, once again, the order expunging the lis pendens notice. We ordered answer and briefs on the lis pendens issue only. The circuit court then responded by filing notice

that it had corrected its oversight and had vacated the order expunging the lis pendens notice.

### Standard of Review

This Court will only grant mandamus relief when the petitioner shows "(1) a clear legal right to the order sought; (2) an imperative duty upon the [circuit] court 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 Hankook Tire Am. Corp., [Ms. SC-2023-0210, Dec. 22, 2023] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2023). We have held that mandamus review is appropriate when the circuit court refuses to comply with a mandate from this Court. See Ex parte Utility Serv. Corp. of Huntsville, 435 So. 2d 1259, 1260 (Ala. 1983).

### Analysis

The sole issue for our review is whether the circuit court erred by failing to vacate its order expunging the lis pendens notice as directed by this Court in Musa. \_\_\_ So. 3d at \_\_\_. But because the circuit court has provided proof that it vacated that order after our Court ordered answer and briefs, the issue is now moot. See Ex parte Hall, 326 So. 3d 1044, 1045 (Ala. 2020) (explaining that a mandamus petition is moot when a

circuit court grants the relief that the petitioner requests after the mandamus petition is filed).

In its reply brief, Musa argues that its petition is not moot because it filed a motion requesting that the judge presiding over the case recuse himself before the circuit court entered the order it requested. That motion, Musa says, "disqualified" the judge "from entering orders." Musa's reply brief, at 7. Consequently, Musa asserts, the circuit court's order vacating the earlier order expunging the lis pendens notice was invalid. But Musa points us to no applicable authority -- and we are aware of none -- stating that post-recusal-motion orders are invalid regardless of whether the judge is actually disqualified. And while we may review the denial of a motion to recuse through mandamus, see Ex parte Alabama Department of Revenue, 325 So. 3d 1260, 1264 (Ala. 2020), we granted answer and briefs here on the lis pendens issue only, cf. Kyser v. Harrison, 908 So. 2d 914, 917 (Ala. 2005) (noting that we generally do not consider issues raised only in a reply brief). Whether the circuit judge should have granted Musa's request that he recuse himself is therefore not properly before us.

Conclusion

Musa received the relief it requested from the circuit court. Accordingly, its petition is moot and must be dismissed.

PETITION DISMISSED.

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