Rel: August 26, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210192

Clement J. Cartron III

v.

Board of Governors of Valley Hill Country Club, Inc.; Valley Hill Country Club, Inc.; Kelsey Haynes; Kerry Bell; Bob Scudamore; Christian Hoffmeyer; Chris Anderson; Doug Warwick; Allen Wilson; Steven Levenhagen; Gann Bryan; and James Brown

Appeal from Madison Circuit Court
(CV-20-900007)

STEWART, Justice.

Clement J. Cartron III is a former member of Valley Hill Country Club, Inc. ("Valley Hill"), a nonprofit private-membership organization that operates a country club in Huntsville. Cartron commenced an action against Valley Hill; the Board of Governors of Valley Hill; and individual board members Kelsey Haynes, Kerry Bell, Bob Scudamore, Christian Hoffmeyer, Chris Anderson, Doug Warwick, Allen Wilson, Steven Levenhagen, Gann Bryan, and James Brown (Valley Hill, the Board of Governors, and the individual board members are referred to collectively as "the defendants"), seeking to enforce his purported statutory right to inspect and copy certain records of Valley Hill and also seeking to recover a purported statutory penalty for the defendants' alleged violation of that right. As a result of Cartron's commencing the action, Cartron's membership in Valley Hill was terminated. Thereafter, Cartron amended his complaint to assert additional claims arising from the termination of his membership in Valley Hill. The Madison Circuit Court ("the trial court") entered a summary judgment against Cartron and in favor of the defendants as to all of Cartron's claims, from which Cartron now appeals. We reverse and remand.

Facts and Procedural History

In May 2019, the greens of the golf course located at the country club began to die. After investigating the condition of the greens, Valley Hill convened a meeting of all of its members in June 2019 to determine a course of action. At that meeting, Valley Hill's members voted to pursue litigation against Estate Management Services, Inc. ("EMS"), and others, alleging that EMS had failed to properly manage the ponds located on the golf course and that the greens had been damaged as a result. Cartron, who was a member of Valley Hill at the time the June 2019 meeting took place, voted in favor of that proposed course of action.

In early November 2019, Cartron emailed Ed Grooms, Valley Hill's general manager, requesting, pursuant to the Alabama Nonprofit Corporation Law, § 10A-3-1.01 et seq., Ala. Code 1975, to inspect and copy a range of documents concerning the management of the greens; Cartron specifically cited § 10A-3-2.32, Ala. Code 1975, which provides, in pertinent part, that "[a]ll books and records of a nonprofit corporation may be inspected by any member, director or officer, or his or her agent or attorney, for any proper purpose at any reasonable time." Bart Siniard, as counsel for Valley Hill, responded to Cartron's request on November

27, 2019, contending that Valley Hill had no duty under the Alabama Nonprofit Corporation Law, to produce the records requested by Cartron. Cartron replied to Siniard on December 3, 2019, indicating that he would resort to court action if Valley Hill failed to produce the requested documents by December 6, 2019.

On January 2, 2020, Cartron commenced the underlying action, asserting his right to inspect and copy the requested documents and seeking a penalty for Valley Hill's purported violation of that right. Valley Hill's Board of Governors convened on March 16, 2020, and determined that Cartron's recent actions had violated Valley Hill's bylaws and rules. On March 19, 2020, the Board of Governors mailed Cartron a letter notifying him of its decision to terminate his membership in Valley Hill and identifying conduct by Cartron that was "injurious to the character or best interest" of Valley Hill as the reason for the termination.

On October 1, 2021, the deadline set by the trial court's scheduling order for filing dispositive motions, both Cartron and the defendants filed summary-judgment motions; the defendants moved for a full summary judgment, and Cartron moved for a partial summary judgment. In his

motion for a partial summary judgment, Cartron asserted that no genuine issue of material fact existed regarding the breach-of-fiduciary-duty, breach-of-contract, wantonness, and abuse-of-process claims he had asserted against the defendants, and he asked the trial court to set a hearing to determine the amount of damages he was entitled to on those claims.

On October 29, 2021, the trial court, without conducting a hearing, granted the defendants' motion for a summary judgment. In its order, the trial court noted that, in their summary-judgment motions, both Cartron and the defendants had conceded that there were no genuine issues of material fact and concluded that the defendants were entitled to a summary judgment in their favor.

Cartron timely filed a postjudgment motion, pursuant to Rule 59, Ala. R. Civ. P., to vacate the trial court's judgment. In that motion, Cartron contended that the summary judgment had been entered contrary to the requirements of Rules 56(c) and 78, Ala. R. Civ. P., because, he argued, he had not been afforded proper notice or an opportunity to present a response or evidence in opposition to the defendants' summary-judgment motion. A hearing on Cartron's motion

to vacate the summary judgment in favor of the defendants was held on November 18, 2021. On November 22, 2021, the trial court denied that motion. Cartron appeals.

Analysis

According to Cartron, the trial court violated the notice and hearing requirements of Rules 56(c) and 78, Ala. R. Civ. P., by entering the summary judgment in the defendants' favor without setting a hearing on the defendants' summary-judgment motion or providing Cartron with an opportunity to oppose their motion. Those rules provide, in relevant part:

> "The motion for summary judgment, with all supporting materials, including any briefs, shall be served at least ten (10) days before the time fixed for the hearing, except that a court may conduct a hearing on less than ten (10) days' notice with the consent of the parties concerned. Subject to subparagraph (f) of this rule, any statement or affidavit in opposition shall be served at least two (2) days prior to the hearing."

Rule 56(c)(2), Ala. R. Civ. P. (emphasis added).

> "To expedite its business, the court may make provision by rule or order for the submission and determination of motions not seeking final judgment without oral hearing upon brief written statements of reasons in support and opposition."

Rule 78, Ala. R. Civ. P. (emphasis added).

This Court has previously noted that the language of Rule 56 "contemplate[s] a hearing upon a motion for summary judgment," Lightsey v. Bessemer Clinic, P.A., 495 So. 2d 35, 38 (Ala. 1986), and has held that "Rule 56(c), Ala. R. Civ. P., itself entitles the parties to a hearing on a motion for summary judgment." Van Knight v. Smoker, 778 So. 2d 801, 805 (Ala. 2000). Moreover, although Rule 78 provides that a trial court may rule on some motions without conducting an oral hearing, that provision applies only to motions "not seeking final judgment," and the Committee Comments on 1973 Adoption of Rule 78 further provide that "the rule prohibits the granting of a Motion Seeking Final Judgment such as a Motion for Summary Judgment without giving the parties an opportunity to be heard orally." (Emphasis added.) Although the defendants acknowledge that Rule 56(c) generally requires a hearing, they note that there are exceptions to that requirement and argue that such an exception applies to the present case.

This Court has indeed recognized that trial courts are given limited discretion in departing from the hearing requirement of Rule 56(c), and we have made clear that, under "certain limited circumstances, a trial court may rule on a motion for summary judgment without conducting a

hearing." Van Knight, 778 So. 2d at 805 (citing Pate v. Rollison Logging Equip., Inc., 628 So. 2d 337, 341 (Ala. 1993)).

In Kelly v. Harrison, 547 So. 2d 443 (Ala. 1989), the plaintiffs in that case filed a summary-judgment motion on August 24, 1987, and trial was set for September 28, 1987. Id. at 444. When the case was called for trial on September 28, 1987, the trial court ordered a continuance of the trial but set a hearing on the plaintiffs' summary-judgment motion for later that day. Id. At the summary-judgment hearing, the defendants' attorney notified the trial court of a pending bankruptcy proceeding and stated that he was not prepared to argue the summary-judgment motion. Id. The trial court gave the defendants additional time to get an order from the bankruptcy court concerning the state-court action, but it advised the parties that it would grant the plaintiffs' motion unless the defendants could secure such an order. Id. Two days later, the bankruptcy court declined to enter a temporary restraining order requested by the defendants. Id. at 444-45. The trial court entered a summary judgment in favor of the plaintiffs on October 1, 1987, and the defendants appealed that judgment, contending that they had not been given proper notice. Id. at 445. This Court affirmed the summary

judgment after (1) observing that the defendants had not lacked notice of the trial date[1] or sought "additional time to submit substantial matters in opposition to the motion or [for] discovery of matters that might lead to a defense" and (2) determining that the trial court's failure to give 10 days' notice of a summary-judgment hearing was therefore harmless error. Id.

In Pate, this Court held that the trial court in that case had not violated Rule 56(c) by granting the defendants' summary-judgment motions at a pretrial conference without having first set a hearing on those motions. 628 So. 2d at 341. As we explained, the plaintiff had been provided notice of the pretrial conference; the defendants' summary-judgment motions had been pending for several months at the time the pretrial conference took place; and the plaintiff had filed "responses, including his own affidavit, to all the motions for summary judgment except [one], to which he had previously responded," two days before the pretrial conference. Id. In view of those circumstances, we concluded that

[1]See Shaw v. State ex rel. Hayes, 953 So. 2d 1247, 1250 (Ala. Civ. App. 2006) ("[O]ne might reasonably expect a trial court to take up a pending summary-judgment motion on the day of trial before conducting an ore tenus proceeding.").

the plaintiff should not have been surprised when the trial court ruled on the motions at the pretrial conference and that the trial court had not abused its discretion by not setting a specific hearing on the motions. Id.

In Husby v. South Alabama Nursing Home, Inc., 712 So. 2d 750 (Ala. 1998), the plaintiff in that case argued that the trial court had improperly entered a summary judgment in favor of certain individual defendants because an initial summary-judgment hearing had taken place before the plaintiff had added those individuals as defendants. This Court rejected the plaintiff's argument after concluding that the "evidence presented in opposition to the motion did not change from the time of the [initial summary-judgment] hearing to the time that the trial judge granted the motion" and that there was therefore "no need for a second hearing." Id. at 754.

Here, in contrast to Kelly, Pate, and Husby, (1) the trial court entered the order granting the defendants' summary-judgment motion without entertaining oral argument of any kind from the parties, (2) the order was entered well in advance of the scheduled trial date, (3) Cartron had not filed a response to the defendants' summary-judgment motion before the trial court entered its order, and (4) a motion seeking

additional discovery filed by Cartron was pending at the time the trial court entered its order.

The defendants, however, argue that the trial court's failure to hold a hearing does not constitute reversible error because, they say, although Cartron never formally filed an opposition to their summary-judgment motion, he "filed his own motion for summary judgment on the exact same issues as [the ones raised by the defendants] and made his arguments for why, under the undisputed facts, he should be awarded judgment as a matter of law." According to the defendants, the trial court therefore ruled purely as a matter of law when it granted the defendants' summary-judgment motion and, thus, did not violate Rule 56(c) by doing so without first holding a hearing.

As an initial matter, we are not persuaded by the defendants' characterization of the parties' cross-motions for a summary judgment. The fact that Cartron's motion did not assert any genuine issues of material fact is not determinative because a moving party affirms only that there are no genuine issues of material fact with respect to the matters raised in his or her own motion. See Taylor v. Waters, 477 So. 2d 441, 444 (Ala. Civ. App. 1985) ("A party is not estopped … by the mere

filing of his motion for summary judgment from later asserting that there are genuine issues of fact." (citing Schlytter v. Baker, 580 F.2d 848 (5th Cir. 1978))); see also United States v. Oakley, 744 F.2d 1553, 1555 (11th Cir. 1984) ("'Cross-motions for summary judgment will not, in themselves, warrant the court in granting summary judgment unless one of the parties is entitled to judgment as a matter of law on facts that are not genuinely disputed.'" (quoting Bricklayers Int'l Union, Local 15 v. Stuart Plastering Co., 512 F.2d 1017, 1023 (5th Cir. 1975))). Moreover, the defendants exclusively cite authorities interpreting what constitutes harmless error in the context of a Rule 59 motion, see Van Voorst v. Federal Express Corp., 16 So. 3d 86 (Ala. 2008); Holsbrooks v. Stacy, 830 So. 2d 708 (Ala. 2002); and Greene v. Thompson, 554 So. 2d 376 (Ala. 1989), in support of the proposition that the trial court's failure to hold a hearing constitutes only harmless error. Those authorities provide that a trial court's failure to hold a hearing requested pursuant to a Rule 59 motion to alter, amend, or vacate a judgment may be harmless if the motion is determined to have had no probability of merit. Id. However, as this Court has previously noted, "Rule 56 'is not prefaced upon whether or not the opposing party may successfully defend against summary

judgment, [but] it does require that the opportunity to defend be given.'" Van Knight, 778 So. 2d at 806 (quoting Tharp v. Union State Bank, 364 So. 2d 335, 338 (Ala. Civ. App. 1978)). Thus, Cartron was prejudiced and denied the procedural safeguards of Rule 56(c) when the trial court granted the defendants' summary-judgment motion without first holding a hearing on the motion or otherwise notifying Cartron that it had taken the motion under submission.

Conclusion

For the reasons stated above, we reverse the trial court's judgment and remand the cause for further proceedings consistent with this opinion.[2]

REVERSED AND REMANDED.

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

[2]We pretermit discussion of the remaining issues raised by Cartron on appeal, and we express no opinion regarding the merits of the parties' respective summary-judgment motions.