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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Ex parte Michael Grayson Brown

PETITION FOR WRIT OF MANDAMUS

(In re: Christopher Lendell Beamon

v.

Michael G. Brown)

(Lee Circuit Court, CV-19-900701)

SELLERS, Justice.

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Michael Grayson Brown petitions this Court for a writ of mandamus directing the Lee Circuit Court to dismiss, pursuant to Rule 12(b)(6), Ala. R. Civ. P., the complaint filed against him by Christopher Lendell Beamon. Brown claims that the complaint is due to be dismissed on the basis that the claims asserted in the complaint are barred by the applicable statute of limitations and that the doctrine of equitable tolling is inapplicable to suspend the running of the limitations period. We deny the petition.

Facts

On August 10, 2017, Beamon, a pedestrian, was injured when he was struck by a vehicle being driven by Brown; the accident occurred in Auburn. On May 8, 2019, Beamon filed a complaint in the United States District Court for the Middle District of Alabama ("the federal court"), naming as defendants Brown and Geico Casualty Company. In that complaint, Beamon asserted state-law claims and purported to invoke the federal court's diversity jurisdiction under 28 U.S.C. § 1332.¹ Despite

¹Section 1332(a)(1) provides, in relevant part, that federal district courts have jurisdiction over suits between "citizens of different States."

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alleging diversity jurisdiction, the complaint stated that both Beamon and Brown were citizens of Alabama. Brown answered the complaint, asserting as a defense lack of subject-matter jurisdiction.

On August 15, 2019, five days after the two-year statute of limitations had expired on the state-law claims, Brown filed a motion to dismiss the complaint filed in the federal court pursuant to Rule 12(b)(1), Fed. R. Civ. P. In that motion, Brown asserted that the federal court lacked subject-matter jurisdiction over the complaint because complete diversity of citizenship was lacking between him and Beamon. Beamon thereafter moved to amend his complaint pursuant to 28 U.S.C. § 1653 to assert that Brown was a citizen of Georgia.² Alternatively, Beamon requested that, if the evidence was insufficient to support diversity

"[W]hen federal jurisdiction is invoked based on diversity, [a plaintiff] must include the citizenship of each party, so that the court is satisfied that no plaintiff is a citizen of the same state as any defendant." Travaglio v. American Express Co., 735 F.3d 1266, 1268 (11th Cir. 2013).

²28 U.S.C. § 1653 provides that "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."

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jurisdiction, the court allow equitable tolling of the statute of limitations, which, he asserted, would allow him to refile his claims in a state court.

On November 22, 2019, while the federal case was pending, but after the two-year limitations period had run, Beamon filed a second complaint, this time in the Lee Circuit Court ("the circuit court"), asserting the same claims against Brown as he had asserted in the federal court.³ On February 6, 2020, the federal court dismissed the complaint before it without prejudice, on the basis that diversity of citizenship was lacking.

On April 3, 2020, Brown filed a motion to dismiss the complaint filed in the circuit court, pursuant to Rule (12)(b)(6), Ala. R. Civ. P., alleging that Beamon had failed to state a claim upon which relief could be granted. In his motion, Brown contended that the claims asserted in the complaint were barred by the applicable two-year statute of limitations set forth in § 6-2-38(1), Ala. Code 1975, and that the doctrine of equitable tolling was inapplicable to suspend the limitations period. After conducting a hearing, the circuit court entered an order denying the

³Beamon did not name Geico as a defendant in that complaint.

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motion to dismiss. In its order, the circuit court stated that the case presented a novel issue concerning whether, under the circumstances presented, the statute of limitations could be tolled:

"The novel situation at bar is that Mr. Beamon timely filed a complaint [in federal court], paid the filing fee, and properly identified Mr. Brown and served him with process, albeit in a court which, after an extended period of fierce litigation, was determined to be the 'wrong' one in which to litigate Mr. Beamon's claims."

Citing Weaver v. Firestone, 155 So. 3d 952 (Ala. 2013), the circuit court explained that a statute of limitations may be tolled when a plaintiff establishes that he or she has been pursuing his or her rights diligently and that some extraordinary circumstance prevented him or her from bringing a timely action. The court further explained that the issue whether equitable tolling is applicable in a case generally involves a fact-specific inquiry. Id. The circuit court concluded that Beamon should be afforded the opportunity to offer evidence to establish the elements of equitable tolling. See Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993)(noting that a dismissal pursuant to Rule 12(b)(6) is proper only when it appears beyond doubt that the plaintiff can prove no set of facts

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in support of a claim that would entitle the plaintiff to relief); see also Weaver, 155 So. 3d at 958 n.3 ("Our holding in the present case concerns only whether Firestone should have an opportunity to offer evidence to prove that he meets the requirements of equitable tolling. The trial court [at the Rule 12(b)(6) motion-to-dismiss stage of the proceedings] did not address, and we do not address, whether Firestone will succeed on the merits as to the equitable-tolling issue."). This mandamus petition, challenging the circuit court's refusal to dismiss the action, followed.

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).

Discussion

Brown seeks mandamus review of the denial of a motion to dismiss, filed pursuant to Rule 12(b)(6), for failure to state a claim upon which

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relief can be granted. The general rule is that, subject to certain narrow exceptions, the denial of a motion to dismiss is not reviewable by petition for a writ of mandamus. Ex parte Liberty Nat'l Life Ins. Co., 825 So. 2d 758 (Ala. 2002). Furthermore, "[t]he denial of a Rule 12(b)(6) motion is not appealable unless this Court has granted permission to appeal pursuant to Rule 5, Ala. R. App. P." Conseco Fin. Corp. v. Sharman, 828 So. 2d 890, 894 (Ala. 2001). Despite the foregoing authority, Brown asserts that this case is appropriate for mandamus review under Ex parte Hodge, 153 So. 3d 734 (Ala. 2014). Brown provides no discussion of that case. Rather, he states only that mandamus is appropriate "in the context of a statute of limitations defense." In Ex parte Hodge, this Court narrowly expanded the scope of mandamus review when the defendants, whose summary-judgment motion had been denied, were faced with the extraordinary circumstance of having to further litigate a medical-malpractice action against them after having demonstrated from the face of the plaintiff's complaint a clear legal right to have the action against them dismissed based on the four-year period of repose found in § 6-5-482(a), Ala. Code 1975; that section provides an absolute bar to all

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medical-malpractice claims brought more than four years after the cause of action has accrued. This case does not involve a statute of repose, which, unlike a statute of limitations, is not subject to equitable tolling. See Pinigis v. Regions Bank, 977 So. 2d 446 (Ala. 2007). Rather, this case presents a novel issue regarding whether equitable tolling should apply when Beamon first commenced an action in a federal court that lacked subject-matter jurisdiction and then commenced an action, asserting the same claims, in state court five days after the applicable limitations period had expired. The circuit court made no ruling on that issue. Rather, it concluded that Beamon, having the burden of proof, should have the opportunity to offer evidence establishing that equitable tolling is warranted under the specific circumstances presented. Thus, this case does not fit squarely with Ex parte Hodge, in which, from the face of the complaint, it was apparent that the defendants were entitled to the relief they sought. Accordingly, Brown has not established a clear legal right to the dismissal of the complaint filed in the circuit court pursuant to Rule 12(b)(6).

Conclusion

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This case does not come within the exception to the general rule that a petition for the writ of mandamus is not the appropriate means by which to seek review of the merits of an order denying a motion to dismiss. Accordingly, we deny the petition for a writ of mandamus.

PETITION DENIED.

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

Shaw, J., concurs in the result.