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# **SUPREME COURT OF ALABAMA**

**OCTOBER TERM, 2025-2026**

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**SC-2025-0364**

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**Ex parte Stonebridge, LLC, and Hubbard Properties, Inc.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Erica Sankey**

**v.**

**Stonebridge, LLC, and Hubbard Properties, Inc.)**

**(Montgomery Circuit Court: CV-22-297)**

McCOOL, Justice.

Stonebridge, LLC, and Hubbard Properties, Inc. (collectively referred to as "the petitioners"), have petitioned this Court for a writ of mandamus, asking us to direct the Montgomery Circuit Court to dismiss the complaint filed by Erica Sankey. For the reasons set forth herein, we grant the petition and issue the writ.

#### Facts and Procedural History

On October 3, 2022, Sankey filed a pro se complaint in the circuit court, which was in the form of a personal letter. According to the complaint, Hubbard Properties owns Stonebridge Apartments, where Sankey had resided in 2021, and Sankey alleged that, while in her apartment on June 17, 2021, she "was struck with a life-threatening bullet" that was fired from outside her apartment. The complaint did not explicitly name a defendant and did not explicitly assert any legal claims; however, Sankey did seek to hold "management from the apartment complex" liable for her injuries on the basis that tenants "were supposed to have 24-hour security on the property since crime was starting to become a serious issue." Sankey sought a judgment in the amount of \$350,000 to cover her medical bills, moving expenses, pain and suffering, and lost wages.

Sankey included with her complaint two documents that she had obtained from the circuit clerk. The first document was a cover sheet that commonly accompanies complaints filed in a circuit court, see Ala. R. Civ. P., Appendix I, Form 93, and, although Sankey did not explicitly name a defendant in her complaint, her cover sheet identified Hubbard Properties as the defendant. The second document was a form that appears to have been intended to serve as Sankey's complaint. Near the top of that document is a traditional "style of the case" with blanks in which to identify the plaintiff and the defendant, and underneath the blanks for the parties' names are blanks designated for their addresses. The rest of the document consists of a blank in which to provide the amount of damages sought, multiple blanks in which to provide the plaintiff's factual allegations and legal claims, and blanks in which to provide the plaintiff's signature and telephone number. As noted, Sankey did not use that document as her complaint but, instead, wrote a personal letter for that purpose. However, Sankey did fill in the style of the case and, in doing so, identified Hubbard Properties as the defendant, and she also filled in the blanks designated for the parties' addresses. Sankey did not include any summonses with her complaint, and she did

not provide the circuit clerk with any instructions regarding service of process or indicate that she planned to hire a process server.

The case-action-summary sheet indicates that no action occurred with respect to Sankey's complaint until June 12, 2024, when the circuit court held a status conference. On October 21, 2024, approximately four months after the status conference, Sankey filed an amended complaint with the assistance of counsel, in which she named Stonebridge and Hubbard Properties as defendants. The amended complaint asserted claims of negligence, wantonness, and failure to provide safe premises, and the claims were based on the same factual allegations that Sankey had asserted in her original complaint. Sankey also included summonses for Stonebridge and Hubbard Properties and their addresses, and she requested that they be served with process by certified mail. Stonebridge was served with process later that month, and Hubbard Properties was served with process in November 2024.

Following service of process, Stonebridge filed a motion to dismiss the complaint, arguing that Sankey's claims were barred by the two-year statute of limitations that is applicable to her claims. See § 6-2-38(l), Ala. Code 1975. Specifically, Stonebridge argued, in relevant part, that

Sankey's claims were time-barred because she had "made no bona fide attempt to effect immediate service before the limitations period expired."<sup>1</sup> Hubbard Properties also filed a motion to dismiss the complaint, arguing in similar fashion that Sankey's claims were time-barred because "no service of the original complaint was ever attempted, and the amended complaint was not filed until well after the statute of limitations had expired." In response, Sankey noted that the documents she had filed with her original complaint had "included the ... legal address for Hubbard Properties," and she claimed that she had included that address "for the purpose of effectuating service" and that she had been "under the impression that the clerk's office would complete service."

On May 5, 2025, the circuit court issued an order in which it denied the petitioners' motions to dismiss, without stating its reasons. The petitioners then timely filed their petition for a writ of mandamus in this Court.

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<sup>1</sup>Stonebridge also argued that it was entitled to a dismissal because, it said, Sankey had not named it as a defendant until she filed her amended complaint, which was after the statute-of-limitations period had expired. Stonebridge reasserts that argument before this Court, but we need not address it because we grant the petition on another basis.

### 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 Alabama Dep't of Corr., 252 So. 3d 635, 636 (Ala. 2017) (citations omitted). Generally, the denial of a motion to dismiss is not reviewable by a petition for a writ of mandamus because an adequate remedy exists by way of an appeal. Ex parte Young, 352 So. 3d 1160, 1164 (Ala. 2021). However, "this Court has acknowledged ""limited exceptions"" to that general rule for motions asserting ""certain defenses,""" including some statute-of-limitations defenses, "because those defenses, if applicable, ""are of such a nature that a party simply ought not to be put to the expense and effort of litigation.""" Id. (citations omitted).

### Analysis

The issue in this case is whether Sankey timely commenced her action for statute-of-limitations purposes. As a threshold matter, it is undisputed that Sankey filed her original complaint before the statute-of-limitations period expired. The petitioners argue, though, that Sankey did not have the bona fide intent for immediate service of process at the

time she filed her original complaint, and it is undisputed that they were not served with process until well after the limitations period had expired. Thus, according to the petitioners, Sankey failed to timely commence her action for statute-of-limitations purposes and, as a result, her complaint must be dismissed. We agree.

In Varden Capital Properties, LLC v. Reese, 329 So. 3d 1230, 1231 (Ala. 2020), this Court explained that

"'[t]he filing of a complaint commences an action for purposes of the Alabama Rules of Civil Procedure but does not "commence" an action for purposes of satisfying the statute of limitations.' [Precise v. Edwards,] 60 So. 3d [228,] 230-31 [Ala. 2010]. Rather, '[f]or statute-of-limitations purposes, the complaint must be filed and there must also exist "a bona fide intent to have it immediately served.'" Id. at 231 (quoting Dunnam v. Ovbiagele, 814 So. 2d 232, 237-38 (Ala. 2001)). 'The question whether such a bona fide intent exist[s] at the time [a] complaint [is] filed must be determined by an objective standard.' ENT Assocs. of Alabama, P.A. v. Hoke, 223 So. 3d 209, 214 (Ala. 2016)."

(Some emphasis added; some emphasis omitted.) Thus, the mere fact that Sankey filed her complaint before the statute-of-limitations period expired does not in and of itself mean that she timely commenced her action for statute-of-limitations purposes. See Ex parte Holland, 415 So. 3d 3, 6 (Ala. 2024) (holding that plaintiff's action had not been commenced for statute-of-limitations purposes, even though the

complaint had been filed within the limitations period, because the evidence "show[ed] a lack of the required bona fide intent to have [the defendant] immediately served").

After noting this bona-fide-intent-to-immediately-serve requirement, the petitioners argue that this case is similar to Maxwell v. Spring Hill College, 628 So. 2d 335 (Ala. 1993). In that case, the plaintiff filed a complaint on the last day of the statute-of-limitations period "but did not provide summonses, service instructions, or addresses until approximately one month later." Id. at 336. The defendant argued that those omissions by the plaintiff "manifested a lack of intent to have the complaint served immediately" and that, as a result, the plaintiff had failed to timely commence his action for statute-of-limitations purposes. Id. This Court agreed with the defendant and held that the defendant was entitled to a summary judgment "based on the expiration of the statutory limitations period." Id.

As noted, in this case Sankey filed her original complaint before the statute-of-limitations period expired. However, like the plaintiff in Maxwell, Sankey did not provide any summonses with the complaint and did not provide the circuit clerk with any instructions regarding service

of process. Thus, the only fact that potentially establishes Sankey's bona fide intent for immediate service of process at the time she filed her original complaint is the fact that she provided the circuit clerk with an address for Hubbard Properties, which is the address at which each of the petitioners eventually received service of process.<sup>2</sup> That was not the case in Maxwell, where the plaintiff did not provide the circuit clerk with an address for the defendant at the time he filed his complaint, and, according to Sankey, she provided that address to the circuit clerk "for the purpose of effectuating service" and "was under the impression that the clerk's office would complete service." Answer, pp. 7-8.

However, "[w]hether the necessary intent existed is an objective inquiry to be answered based on the plaintiff's actions, not conclusory statements of subjective intent." Varden, 329 So. 3d at 1234 (emphasis added). Thus, Sankey's contention that the address she provided with her original complaint was "for the purpose of effectuating service" is not dispositive. See id. at 1234 (holding that plaintiff's attorney's "conclusory

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<sup>2</sup>The materials provided to this Court indicate that, although Stonebridge and Hubbard Properties have different addresses, they have the same registered agent on file with the Alabama Secretary of State and that service of process was provided to their agent at the address that Sankey included with her original complaint.

assertion that [plaintiff] intended to have the complaint served" was not sufficient evidence of bona fide intent for immediate service of process in light of other evidence). Rather, we must look at the totality of the circumstances and make an objective determination regarding Sankey's intent or lack of intent with regard to service of process. *Id.* at 1235.

We hold that, viewed objectively, there is no evidence indicating that Sankey had the bona fide intent for immediate service of process at the time she filed her original complaint. As noted, the only fact that potentially weighs in Sankey's favor on this issue is the fact that, when she filed her original complaint, she provided the circuit clerk with an address at which service of process could have been perfected. However, Sankey admits that she did not even "know of the service requirement" at the time she filed her original complaint. Answer, p. 20 (emphasis added). That admission undermines Sankey's contention, which she asserted only after the petitioners raised their statute-of-limitations defense, that she had provided that address "for the purpose of effectuating service." In fact, given her admission, it appears that Sankey provided that address only because the document she had obtained from the circuit clerk included blanks that were expressly

designated for both the plaintiff's address and the defendant's address, and, notably, that document did not explain why the defendant's address was necessary. Thus, given the specific circumstances of this case, the mere fact that Sankey's original complaint included an address at which service of process could have been perfected does not establish that she had the bona fide intent for immediate service of process at that time. See Kendrick v. Lewis, 88 So. 3d 899, 906 (Ala. Civ. App. 2012) (holding that the plaintiff lacked the bona fide intent for immediate service of process, even though he had "placed [the defendant's] address in the complaint," because other evidence indicated that he did not have such intent). Cf. Reynolds v. Sheppard, 818 So. 2d 389 (Ala. 2001) (per Houston, J., with one Justice concurring and three Justices concurring in the result) (holding that pro se plaintiff was deemed to have filed her complaint with the bona fide intent for immediate service of process because she had included the defendant's address in her complaint and expressly requested service).

That said, the evidence does indicate that Sankey had the bona fide intent for immediate service of process at the time she filed her amended complaint, but Sankey did not file that complaint until October 2024 --

more than one year after the statute-of-limitations period had expired.<sup>3</sup> There is no evidence that, viewed objectively, indicates that, before that time, Sankey ever had the bona fide intent for the petitioners to be served with process, much less that she had such intent at the time she filed her original complaint. Thus, Sankey failed to timely commence her action for statute-of-limitations purposes, and, as a result, the petitioners have a clear legal right to the dismissal of her complaint.

We acknowledge the three arguments that Sankey has raised in an attempt to save her complaint from dismissal. However, we do not find those arguments persuasive.

First, Sankey relies on Rule 4(b), Ala. R. Civ. P., which states, in relevant part:

"If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative, after at least fourteen (14) days' notice to the plaintiff, may dismiss the action without prejudice as to the defendant upon whom service was not made or direct that service be effected within a specified time; provided, however, that if the plaintiff shows

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<sup>3</sup>According to her complaint, Sankey's injury occurred on June 17, 2021, which would ordinarily mean that she was required to commence her action no later than June 17, 2023. See § 6-2-38(l), Ala. Code 1975. However, because June 17, 2023, was a Saturday, Sankey actually had until Monday, June 19, 2023, to commence her action. Tobiassen v. Sawyer, 904 So. 2d 258, 261 n.3 (Ala. 2004).

good cause for the failure to serve the defendant, the court shall extend the time for service for an appropriate period."

Rule 4(b) is not applicable in this case, though, because the petitioners moved to dismiss Sankey's complaint on the basis that she failed to timely commence her action for statute-of-limitations purposes, not on the basis that she failed to timely serve them with process in compliance with Rule 4(b). As this Court explained in ENT Associates of Alabama, P.A. v. Hoke, 223 So. 3d 209, 218 (Ala. 2016):

"'... [T]he plaintiffs make numerous arguments regarding whether they were entitled to an extension of time to serve their complaint under Rule 4(b), Ala. R. Civ. P. However, the summary judgment is premised on the plaintiffs' failure to commence the action for statute-of-limitations purposes; Rule 4(b) is immaterial to this analysis.'

"[Dunnam v. Ovbiagele, 814 So. 2d 232,] 234 [(Ala. 2001)] (emphasis added).

"... [T]he question whether a complaint is timely served pursuant to Rule 4(b) is distinct from the question whether a plaintiff timely commenced his or her action for statute-of-limitations purposes by possessing, at the time the complaint is filed, the bona fide intent to have the complaint immediately served."

See also Varden, 329 So. 3d at 1235 (noting that "Rule 4(b) was 'immaterial' to the statute-of-limitations issue" (citation omitted)). Thus, Sankey's reliance on Rule 4(b) is unavailing.

Next, Sankey argues that pro se plaintiffs, particularly those who "hand file" their complaints, are at a disadvantage when compared to plaintiffs who are represented by counsel because, she says, pro se plaintiffs are likely not aware of the service-of-process requirements. As a threshold matter, we are not convinced that pro se plaintiffs are on the whole as unknowledgeable regarding service of process as Sankey would have us believe. See Reynolds, supra (noting that pro se plaintiff expressly requested that the circuit clerk serve the defendant with process). Regardless, it is well established that

"'[a] pro se litigant is not exempt from procedural rules merely because of an unfamiliarity with them. See Asam v. Devereaux, 686 So. 2d 1222 (Ala. Civ. App. 1996). "[T]he rules governing the operation of the courts of this state are no more forgiving to a pro se litigant than to one represented by counsel." Id. at 1223.'"

Ex parte Branson Mach., LLC, 78 So. 3d 950, 955 (Ala. 2011) (citation omitted). See also Boros v. Baxley, 621 So. 2d 240, 243-44 (Ala. 1993) (noting that pro se litigants are "treated as parties represented by counsel are treated" and therefore "'must comply with legal procedures

and court rules'" (citation omitted)). Thus, Sankey's contention that she was unaware of the service requirements does not excuse her failure to take steps to ensure service of process at the time she filed her original complaint.

Finally, Sankey argues that we should overrule Ward v. Saben Appliance Co., 391 So. 2d 1030, 1035 (Ala. 1980), in which this Court first held that an action has not been commenced for statute-of-limitations purposes unless the complaint is "filed with the bona fide intention of having it immediately served." In support of her argument, Sankey cites Rule 3(a), Ala. R. Civ. P., which states: "A civil action is commenced by filing a complaint with the court." Thus, according to Sankey, "a clear reading of the Alabama Rules of Civil Procedure" indicates that "the only requirement to commence [an action] is to file a complaint." Answer, p. 21.

However, Rule 3(a) was in place at the time Ward was decided, and, following Ward, this Court has consistently held that there is a distinction between commencing an action for purposes of the Rules of Civil Procedure and commencing an action for purposes of a statute of limitations. See, e.g., Varden, supra. In other words, this Court has

already determined that the bona-fide-intent-to-immediately-serve requirement is not inconsistent with Rule 3(a). Thus, Sankey's reliance on that rule is not a compelling argument for abandoning the bona-fide-intent-to-immediately-serve requirement that has been well established and consistently applied by this Court for more than 45 years.<sup>4</sup> See Ex parte Holland, 415 So. 3d at 9 (Cook, J., concurring specially) (noting that, "[i]n the over 40 years since our Court issued our decision in Ward, the bona fide-intention principle has been consistently applied by our Court" and that, "'[a]lthough courts have power to overrule their decisions and change their interpretations, they do so only for the most compelling reasons'" (quoting Bryan A. Garner et al., The Law of Judicial Precedent 333 (Thompson Reuters 2016))).

### Conclusion

Viewed objectively, the evidence in this case indicates that Sankey did not have the bona fide intent for immediate service of process at the

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<sup>4</sup>Sankey also appears to argue that the Committee Comments to the Rules of Civil Procedure indicate that the bona-fide-intent-to-immediately-serve requirement is inconsistent with Rule 3(a). We do not suggest that there is any merit to Sankey's argument, but, even if there is, the Committee Comments to the Rules of Civil Procedure, though sometimes persuasive, are not law and "are not binding." Iverson v. Xpert Tune, Inc., 553 So. 2d 82, 88 (Ala. 1989).

time she filed her original complaint, and it is undisputed that the petitioners were not served with process until after the statute-of-limitations period had expired. Thus, Sankey failed to timely commence her action for statute-of-limitations purposes, and, as a result, the petitioners have demonstrated that they have a clear legal right to the dismissal of Sankey's complaint. We therefore grant the petition for a writ of mandamus and direct the circuit court to dismiss Sankey's complaint with prejudice. See Riddlesprigger v. Ervin, 519 So. 2d 486, 487 (Ala. 1987) (noting that a dismissal that occurs after the statute-of-limitations period has expired constitutes a dismissal with prejudice).

**PETITION GRANTED; WRIT ISSUED.**

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