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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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**Ex parte John R. Cooper**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: William Jeff Hulsey and Traci Bullard**

**v.**

**John R. Cooper)**

**(Morgan Circuit Court, CV-20-900027)**

PARKER, Chief Justice.

John R. Cooper, the director of the Alabama Department of Transportation ("ALDOT"), seeks a writ of mandamus directing the

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Morgan Circuit Court to dismiss an action commenced against him by William Jeff Hulseley and Traci Bullard. Because Hulseley's and Bullard's claims were based on Cooper's official duties as director, he was entitled to a dismissal based on State immunity, and we grant his petition.

### I. Facts

Hulseley was injured when he lost control of his vehicle during a winter weather event. Hulseley and Bullard, his common-law wife, sued Cooper, individually, for damages: Hulseley based on personal injury, Bullard based on loss of consortium. Hulseley and Bullard alleged that ALDOT employees made the road surface slick by applying an improper mixture of anti-icing brine and diesel fuel to it, then aggravated the slickness by flushing the road with water, then failed to warn drivers and close the road. Hulseley and Bullard also alleged that Cooper failed to supervise and train ALDOT employees and to ensure that they followed ALDOT policies. Cooper moved to dismiss the complaint, arguing that these claims were barred by State immunity and State-agent immunity. The circuit court denied Cooper's motion, and he seeks mandamus review.

### II. Standard of Review

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"A writ of mandamus will be issued only when (1) the petitioner has a clear legal right to it, (2) a respondent has refused to perform a duty, (3) there is no other adequate remedy, and (4) the petitioned court has jurisdiction." Ex parte Boone Newspapers, Inc., [Ms. 1190995, Feb. 12, 2021] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2021). A trial court's denial of a motion to dismiss grounded on immunity is reviewable by mandamus. Ex parte Branch, 980 So. 2d 981, 984 (Ala. 2007). And we review such a denial de novo; that is, we accept the complaint's allegations as true and determine whether the plaintiff may possibly prevail. Ex parte Burkes Mech., Inc., 306 So. 3d 1, 3 (Ala. 2019).

### III. Analysis

Under § 14 of the Alabama Constitution, "the State of Alabama shall never be made a defendant in any court of law or equity." Art. I, § 14, Ala. Const. 1901 (Off. Recomp.). Section 14 is a jurisdictional bar to claims against the State itself, State agencies, and State officers and employees who are sued for damages in their official capacities. Ex parte Alabama Dep't of Transp., 985 So. 2d 892, 894, 895 (Ala. 2007); Ex parte Moulton, 116 So. 3d 1119, 1130-31 (Ala. 2013). In particular, State officers and

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employees "are immune from suit when the action against them is, in effect, one against the State." Barnhart v. Ingalls, 275 So. 3d 1112, 1122 (Ala. 2018).

In Barnhart, this Court held that a purported individual-capacity claim is, in effect, one against the State when the duty allegedly breached is owed solely because of the officer or employee's official position. Id. at 1125-27. In applying this test to the facts of Barnhart, this Court held that the plaintiffs' backpay claims against State officers individually were actually claims against the State because the officers' duty to apply wage laws existed solely because of their official positions. Id. at 1126. Similarly, in Anthony v. Datcher, 321 So. 3d 643, 653 (Ala. 2020), this Court held that damages claims against a State educational official individually for misclassifying positions of college instructors for salary purposes were actually barred official-capacity claims because the official's duty to properly classify the positions existed only because of her official position. Most recently, in Meadows v. Shaver, [Ms. 1180134, Nov. 20, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2020), a plurality of this Court determined that claims against a circuit clerk individually for failing to transmit a

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criminal sentence-status transcript were, in substance, official-capacity claims because the clerk's alleged duties relating to the transcript existed only because of her position.

Here, Cooper argues that the duties he allegedly breached existed solely because of his official position as director of ALDOT. Hulsey and Bullard's complaint alleged that Cooper owed the following duties:

- "to keep the roadway in repair and in a reasonably safe condition"
- "to not act wilfully, maliciously, fraudulently, in bad faith, beyond [his] authority, and/or under a mistaken interpretation of the law while engaging in [his] ALDOT employment duties"
- "to follow ALDOT policies, procedures, regulations, and guidelines relating to the hiring, training, supervision, and retention of employees"
- "to ensure that [ALDOT] policies were being followed by ALDOT employees"

Cooper is correct that each of these alleged duties existed only because he was the director of ALDOT. Apart from his official position, Cooper owed no duty to keep the roadway in repair, to properly perform ALDOT employment duties, to follow ALDOT policies, or to ensure that ALDOT policies were being followed by ALDOT employees. Thus, Hulsey's

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and Bullard's claims against Cooper were actually official-capacity claims; they were, in effect, claims against the State that were barred by State immunity.

Hulsey and Bullard argue that the claims were not barred by State immunity because, they assert, Cooper sought State immunity "based solely on the title of his office, rather than the nature of the suit." However, as discussed above, Cooper's allegedly breached duties existed solely because of his official position. Under Barnhart and its progeny, that fact entitled Cooper to State immunity based on the "nature of [the] claims," Barnhart, 275 So. 3d at 1126 (emphasis omitted); see Anthony, 321 So. 3d at 653; Meadows, \_\_\_ So. 3d at \_\_\_, not merely the "'character of the office,'" Barnhart, 275 So. 3d at 1122 (citations omitted).

Hulsey and Bullard also contend that the complaint's "allegations ... allow[ed] [their] claims to circumvent [State] immunity." They appear to be referring to the allegations that Cooper "acted willfully, maliciously, fraudulently, in bad faith, beyond [his] authority, and/or under a mistaken interpretation of the law." But those allegations related to State-agent immunity under Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality

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opinion),<sup>1</sup> not State immunity under § 14. As clarified in Moulton, allegations that a State officer or employee acted willfully, maliciously, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law do not circumvent State immunity under § 14 when the claim is, in effect, one against the State (i.e., actually an official-capacity claim). 116 So. 3d at 1138-41. And as discussed above, the claims here were in substance official-capacity claims. Thus, the complaint's allegations did not circumvent State immunity.

Finally, Hulseley and Bullard argue that, under DeStafney v. University of Alabama, 413 So. 2d 391, 395 (Ala. 1981), a personal-injury claim based on negligence of a State officer or employee is not barred by State immunity if the officer or employee was not exercising a discretionary function. Hulseley and Bullard point out that Cooper made no argument that he was exercising a discretionary function. Again, Hulseley and Bullard conflate State immunity with State-agent immunity. In

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<sup>1</sup>A majority of this Court adopted the Cranman plurality's restatement of State-agent-immunity law in Ex parte Butts, 775 So. 2d 173, 177-78 (Ala. 2000).

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DeStafney, which was decided before Cranman's restatement of State-agent-immunity law, this Court applied a discretionary-function analysis, derived from the Restatement (Second) of Torts § 895D, to claims asserted against a State agent individually. 413 So. 2d at 393-96. DeStafney's discretionary-function analysis has now been superseded by the Cranman restatement. See Cranman, 792 So. 2d at 402-04 (discussing DeStafney's analysis within Cranman's summary of prior State-agent-immunity jurisprudence before articulating Cranman's restatement). And as noted above, that restatement applies only to State-agent immunity, not State immunity.

Because Hulsey's and Bullard's claims against Cooper were, in effect, official-capacity claims against the State, they were not claims against him individually. Thus, we need not address the parties' arguments regarding whether Cooper was entitled to State-agent immunity under Cranman.

#### IV. Conclusion

Hulsey's and Bullard's claims against Cooper were barred by State immunity. Accordingly, we grant Cooper's petition and issue a writ of



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mandamus directing the circuit court to dismiss Hulsey's and Bullard's claims.

PETITION GRANTED; WRIT ISSUED.

Bolin, Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ.,  
concur.

Sellers, J., concurs in the result.