

REL: April 16, 2021

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

---

2200159

---

**Ex parte Wyatt Properties, LLC, Beacon Towers, LLC,  
and Taylor Peake**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Taylor Peake, Wyatt Properties, LLC,  
and Beacon Towers, LLC**

**v.**

**Spencer Wyatt)**

**(Jefferson Circuit Court, DR-18-900658.01)**

---

**2200214**

---

**Ex parte Grey First, LLC**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Taylor Peake, Wyatt Properties, LLC,  
and Beacon Towers, LLC**

**v.**

**Spencer Wyatt)**

**(Jefferson Circuit Court, DR-18-900658.01)**

EDWARDS, Judge.

In appellate case number 2200159, Wyatt Properties, LLC, Beacon Towers, LLC, and Taylor Peake petition this court for a writ of mandamus directing Judge Agnes Chappell, who serves as a judge in the Domestic Relations Division of the Jefferson Circuit Court ("the domestic-relations division"), to enter an order (1) transferring to the Civil Division of the Jefferson Circuit Court ("the civil division") certain claims they filed in the domestic-relations division against Spencer Wyatt and a counterclaim that Wyatt, on behalf of himself and purportedly on behalf of Wyatt

2200159 and 2200214

Properties and Beacon Towers, filed against Peake and Grey First, LLC,<sup>1</sup> or (2) dismissing those claims and the counterclaim. For ease of reference and for the purpose of addressing the positions taken by Peake in the underlying proceedings, Wyatt Properties, Beacon Towers, and Peake are collectively referred to as "the Peake petitioners." The Peake petitioners contend that they are entitled to the requested relief on the ground that the domestic-relations division lacks subject-matter jurisdiction over the claims at issue. The Peake petitioners also argue that Judge Chappell exceeded her discretion by denying their request for a jury trial as to certain claims.

Grey First has adopted the Peake petitioners' arguments regarding Wyatt's counterclaim and also has filed its own mandamus petition, appellate case number 2200214, raising arguments regarding the

---

<sup>1</sup>The counterclaim against Grey First was based on actions allegedly taken by Peake on behalf of Grey First. The parties have discussed Wyatt's claim against Grey First as a third-party claim. However, it is properly designated as a counterclaim involving an additional party, see Rule 13(h), Ala. R. Civ. P., rather than as a third-party claim pursuant to Rule 14, Ala. R. Civ. P. See Ex parte Curry, 157 So. 3d 906, 911 (Ala. Civ. App. 2014).

2200159 and 2200214

counterclaim asserted against it and also arguing that Wyatt failed to satisfy the requirements for pleading a derivative claim. This court has consolidated the petitions ex mero motu.

On March 22, 2019, Judge Chappell entered a judgment divorcing Wyatt and Peake. The divorce judgment was based on a settlement agreement entered between Wyatt and Peak ("the settlement agreement"), which stated that it would be "incorporated in" any final judgment of divorce. The divorce judgment stated that the settlement agreement was "ratified and approved and made a part of this [divorce judgment], the same as if fully set out herein, and [that] the parties are ordered to comply therewith." The settlement agreement included provisions regarding the division of martial property, custody of the parties' child, and a waiver of alimony by each party, among other matters. The settlement agreement included the following provisions regarding the ownership and management of Wyatt Properties, which is a member-managed limited-liability company, and Beacon Towers:

"35. Wyatt Properties ... [Wyatt] and [Peake] each have a fifty percent (50%) membership interest in Wyatt Properties ... The parties shall continue to own and manage said entity

2200159 and 2200214

and all holdings of said entity as 50-50 co-owners (i.e., the parties' divorce shall not cause any change to the structure of Wyatt Properties ...). So long as Wyatt Properties ... generates income, [Wyatt] and [Peake] shall each receive fifty percent (50%) of any income resulting from their interest in said entity. All monthly financial statements for Wyatt Properties ... shall be sent directly to [Peake].

"36. Beacon Towers ... Wyatt Properties ... has a one hundred percent (100%) membership interest in Beacon Towers .... Wyatt Properties ..., as an entity co-owned by [Wyatt] and [Peake], shall continue to own and manage Beacon Towers ... and all holdings of said entity as its sole member (i.e., the parties' divorce shall not cause any change to the structure of Beacon Towers ...). So long as Beacon Towers ... generates income, Wyatt Properties ... shall receive any income resulting from its interest in said entity."

(Emphasis added.) Based on the materials before us, the primary asset of Beacon Towers was a commercial-office building, and the primary asset of Wyatt Properties was Beacon Towers. The settlement agreement also included a release-and-waiver provision ("the release provision") that stated:

"4. The parties hereto, exclusive of the terms and provisions of this instrument, each waive all right, title, and interest, consummate and inchoate, in and to the property and estate of the other by way of expectancy or reversion or otherwise, including marital, insurance, contractual, and all other rights by way of dower, homestead, exemption, alimony, or otherwise, in present or in expectancy as to any and all

2200159 and 2200214

property and estate of the other, and each of the parties do hereby release and discharge the other from any and all control, claims, demands, actions, or causes of action, except as to the obligations imposed by [the settlement agreement] ... or by the Court's [judgment], this being intended as full, final, and complete settlement of the property, marital, and other rights of the parties hereto."

(Emphasis added.)

Before continuing with the procedural history, we note that Grey First is a manager-managed limited-liability company and was formed by Peake on March 11, 2020. Based on the materials before us, Peake is the manager of Grey First and owns a 75% membership interest in Grey First; the remaining 25% membership interest is owned by an individual who is not a party in the underlying proceedings.

On August 24, 2019, Peake filed a petition for modification of child custody in the domestic-relations division, which was assigned case number DR-18-900658.01 ("the modification action"). Peake alleged in her modification petition that a material change of circumstances had occurred since the entry of the divorce judgment, and she sought an order awarding her sole legal and sole physical custody of the parties' child and child support. On September 29, 2019, Peake amended her modification

2200159 and 2200214

petition ("the September 2019 amended modification petition") by adding allegations quoting paragraphs 35 and 36 of the settlement agreement and stating that she and Wyatt were

"co-owners in Wyatt Properties and Beacon Towers .... [Wyatt] is the managing partner in the business. [Wyatt] is responsible for all day to day activities of the business, including management of Beacon Towers.<sup>[2]</sup> [Peake] has recently become aware that Beacon Towers is imminent of foreclosure. [Wyatt] has failed to pay the building vendors and the utilities as contractually obligated. As a result, the business is roughly \$150,000.00 in debt and a lien has been placed on the building. [Wyatt] has been withdrawing money from the business and using it for his own personal use. [Peake] alleges [Wyatt] has been stealing money from the business according to the company's financial statements and she is currently struggling to satisfy the outstanding debts.

"... [Wyatt] has defrauded the company and needs to be removed as a partner immediately."

---

<sup>2</sup>The operating agreement for Wyatt Properties provided that the members had equal rights regarding management of that business; the materials before us do not include the organizational documents for Beacon Towers. Based on the context in which Peake alleged that Wyatt was "the managing partner in the business," it appears that she was referring to his status in regard to the practical operations of the businesses rather than a legal relationship that she and Wyatt had established.

2200159 and 2200214

In the September 2019 amended modification petition, Peake also added requests that the domestic-relations division make her the sole owner of Wyatt Properties and Beacon Towers, that it divest Wyatt of all interest in Wyatt Properties and Beacon Towers, and that it order Wyatt to reimburse her for all debts paid solely by Peake relating to those entities.

On October 10, 2019, Peake, on behalf of herself and purportedly on behalf of Wyatt Properties and Beacon Towers, filed a complaint against Wyatt in the civil division, which was assigned case number CV-19-904525 and was assigned to Judge Marshall Jackson Hatcher ("the civil action").<sup>3</sup> In that complaint, the Peake petitioners alleged that Wyatt had

---

<sup>3</sup>We acknowledge the unusual posture of the allegations reflected in the materials before us, with each member of Wyatt Properties purporting to represent Wyatt Properties and Beacon Towers against the other member of Wyatt Properties. However, because all members of Wyatt Properties and Beacon Towers are represented in the underlying litigation as to the conflicting positions of Wyatt and Peake, we will treat Wyatt and Peake as each representing the interests of Wyatt Properties and Beacon Towers for ease of discussion. As stated in note 2, supra, Wyatt and Peake have equal membership rights in Wyatt Properties, which is the sole owner of Beacon Towers. Section 10A-5A-9.01(a), Ala. Code 1975, authorizes a member's action against another member "to enforce the member's rights and otherwise protect the member's interests," and Ala. Code 1975, § 10A-5A-9.02, authorizes a member of a limited-liability company to commence a derivative action on behalf of a limited-liability

2200159 and 2200214

been responsible for the management of Wyatt Properties and Beacon Towers and that he had "continuously and systematically neglected his managerial responsibilities since as early as March of 2019," purportedly by, among other things, failing to pay vendors that had provided utility services for Beacon Towers. In addition, the Peake petitioners alleged that Wyatt had failed to pay Beacon Towers' property taxes for 2018 and that Beacon Towers "owe[d] approximately \$32,701.29 in past due [property] taxes." The complaint also included allegations that Wyatt had failed to file Wyatt Properties' income-tax returns for 2016, 2017, and 2018<sup>4</sup> and had underpaid taxes for that company in 2014 and 2015, which allegedly had resulted in an outstanding tax obligation of \$5,501.53. The complaint further included allegations that Wyatt had commingled tenant

---

company in certain instances. To the extent the derivative-action requirements are pertinent to our resolution of the mandamus petitions before us, specifically, the petition of Grey First, we discuss those requirements infra.

<sup>4</sup>This matter was apparently known to Peake before the entry of the divorce judgment because she further alleged that, as a result of the failure to file income-tax returns for Wyatt Properties, she had been unable to file her personal income-tax returns "for the past three years."

2200159 and 2200214

security deposits with operating funds but does not reference a time frame for that alleged action; that, post-divorce, he had charged personal expenses to accounts for Wyatt Properties; and that he had violated the divorce judgment by failing to provide Peake with financial statements for Wyatt Properties. Peake alleged that she had assumed managerial control of Wyatt Properties and the building owned by Beacon Towers but that Wyatt had retained possession of company credit cards and was restricting her access to certain books and records. Peake further alleged that Wyatt Properties was "deadlocked" by Wyatt's refusal to cooperate with Peake to address certain matters. The complaint asserted claims for dissociation and removal of Wyatt as a member of Wyatt Properties, for preliminary and permanent injunctive relief against Wyatt, and for compensatory damages based on Wyatt's alleged breaches of fiduciary duties to each of the Peake petitioners. The complaint further requested a jury trial.

On November 13, 2019, Wyatt filed a motion to dismiss the civil action. Wyatt contended that the civil action was due to be dismissed for lack of subject-matter jurisdiction because it involved matters within the

2200159 and 2200214

exclusive jurisdiction of the domestic-relations division (specifically with regard to those matters arising before the entry of the divorce judgment and those claims pending before Judge Chappell in the modification action), because it failed to state a claim upon which relief could be granted, or because it was subject to abatement under Ala. Code 1975, § 6-5-440. Wyatt asserted that Peake was barred from litigating claims in the civil division that arose out of conduct that occurred before the entry of the divorce judgment because, he said, those claims allegedly had been released pursuant to the settlement agreement. Wyatt also argued that, to the extent that Peake's claims had not been released, the claims nevertheless related to the interpretation and enforcement of the divorce judgment, specifically, the settlement-agreement provisions regarding the continuing ownership and operation of Wyatt Properties and Beacon Towers, matters that he said were within the exclusive jurisdiction of the domestic-relations division.

On December 9, 2019, Peake filed a second amendment to her modification petition in the domestic-relations division, deleting all references to the matters that she had added in the September 2019

2200159 and 2200214

amended modification petition. The following day, the Peake petitioners filed a response in the civil action, opposing Wyatt's motion to dismiss that action and attaching a copy of Peake's second amendment to her modification petition. Judge Hatcher held a hearing on Wyatt's motion to dismiss the civil action. On December 18, 2019, Judge Hatcher entered an order stating that the civil division had no jurisdiction over the Peake petitioners' claims and that,

"[i]n Ex parte Renasant Bank, 185 So. 3d 1134, 1139 (Ala. Civ. App. 2015), the Alabama Court of Civil Appeals stated 'if the entire [settlement] agreement became merged in the [divorce judgment], only the [divorce judgment] and not the contract may be enforced.' All of [the Peake petitioners'] claims arise from alleged breaches of the [settlement agreement] that was 'ratified and approved and made a part of [the divorce judgment]'. ...

"The law is clear that the circuit court in which jurisdiction over a controversy is first invoked has exclusive jurisdiction over that controversy until that controversy is concluded, subject only to appellate review. Turenne v. Turenne, 884 So. 2d 844, 849 (Ala. 2003)."

2200159 and 2200214

The December 2019 order then quoted Ala. Code 1975, § 12-11-11,<sup>5</sup> transferred the civil action to the domestic-relations division, and directed

---

<sup>5</sup>Section 12-11-11 provides:

"Whenever it shall appear to the court that any case filed therein should have been brought in another court in the same county, the court shall make an order transferring the case to the proper court, and the clerk or register shall forthwith certify the pleadings, process, costs and order to the court to which the case is transferred, and the case shall be docketed and proceed in the court to which it is transferred, and the costs accrued in the court in which the case was originally filed shall abide by the result of the case in the court to which transferred."

See also Ex parte E.S., 205 So. 3d 1245, 1250 (Ala. 2015) (Shaw, J., dissenting) (noting that the predecessor statute to § 12-11-11 "was ... used as a mechanism to transfer cases, in counties in which the court sat in divisions, from one division of the circuit court to another division of that circuit court in that county"); Ex parte N.B., 222 So. 3d 1160, 1163 (Ala. 2016) (Shaw, J., concurring specially) (opining that, after the adoption of the Rules of Civil Procedure, § 12-11-11 "was retained [in the Alabama Code] because it still had a use in transferring cases between the divisions of the circuit court"); and Ex parte N.G., [Ms. 1190390, Sept. 4, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2020) (discussing Justice Shaw's special writings in Ex parte E.S. and Ex parte N.B. and holding that, "[u]nder § 12-11-11, courts within the same county have the authority to transfer cases both 'horizontally' to courts of like jurisdiction and 'vertically' to 'lower' and 'higher' courts") .

2200159 and 2200214

the circuit-court clerk to compile and deliver the record in the civil action to the domestic-relations division.

The Peake petitioners did not seek mandamus review of Judge Hatcher's December 2019 order. Instead, on January 21, 2020, the Peake petitioners filed in the modification action an amended complaint against Wyatt ("the January 2020 amended complaint"). The January 2020 amended complaint purported "to supplement the petitions for relief" that had been filed in the modification action and stated that the civil-action "case" and case file had been transferred from the civil division to the domestic-relations division and had been incorporated into case number DR-18-900658.01, i.e., the modification action. The January 2020 amended complaint also included an allegation that "[s]ubject-matter jurisdiction exists pursuant to Ala. Code [1975], §§ 12-11-30 and 12-11-31,"<sup>6</sup> and that "[j]urisdiction is ... appropriate in [the domestic-relations division] pursuant to the [divorce judgment] governing the division of

---

<sup>6</sup>Section 12-11-30, Ala. Code 1975, describes the original jurisdiction of the circuit court in civil cases, and § 12-11-31, Ala. Code 1975, describes the equitable jurisdiction of the circuit court.

2200159 and 2200214

property between Peake and Wyatt, which includes the ownership of Wyatt Properties and Beacon Towers." The January 2020 amended complaint contained allegations that Wyatt's alleged wrongful actions had occurred both before and after the entry of the divorce judgment, including, among other allegations, that Wyatt purportedly had forged Peake's name on a personal guaranty for an obligation of Beacon Towers in May 2017; that Wyatt had wrongly "caus[ed] over \$540,000 in personal expenses to be paid directly to himself or on his behalf" out of operating accounts for Wyatt Properties and Beacon Towers since August 3, 2017; that Wyatt's actions had placed Beacon Towers in a position of not being able to pay the mortgage on its commercial-office building; that Peake had not received or benefited from disbursements made by Wyatt from the businesses and had had no knowledge of Wyatt's activities until late August 2019; and that, "[s]ince many of Wyatt's managerial actions were unknown to Peake prior to entry of the [divorce judgment], Peake has good cause and need for modification of the [divorce judgment]." The January 2020 amended complaint also included an allegation that, in addition to purportedly constituting breaches of fiduciary duties, "Wyatt's

2200159 and 2200214

personal distributions and acts of self-dealing were ... [a] direct violation of [the divorce judgment]." As part of the relief requested in the January 2020 amended complaint, the Peake petitioners sought "[m]odification of the [divorce judgment by] removing Wyatt as a member and manager of Wyatt properties and enjoining his participation in the management and operations of both Wyatt Properties and Beacon Towers." The January 2020 amended complaint also requested an award of compensatory damages for Wyatt's purported mismanagement of Wyatt Properties and Beacon Towers and purported breaches of his fiduciary duties.

On June 3, 2020, Wyatt filed an answer to the January 2020 amended complaint and a verified counterclaim against Peake and Grey First on behalf of himself, Wyatt Properties, and Beacon Towers ("the counterclaim"). See note 3, supra. In his answer, Wyatt denied the material allegations of the January 2020 amended complaint but admitted that the domestic-relations division had jurisdiction over the case. As to Peake, the counterclaim was based, in part, on her purported mismanagement of Wyatt Properties and Beacon Towers and her purported breaches of fiduciary duties to Wyatt, Wyatt Properties, and

2200159 and 2200214

Beacon Towers after August 2019. The counterclaim sought monetary damages for Peake's purported breaches of her fiduciary duties and for her purported attempt to oppress and "squeeze out" Wyatt as to his interests in Wyatt Properties and Beacon Towers. In addition, the counterclaim alleged that Peake had caused Beacon Towers to default on the mortgage loans on the commercial-office building it owned, had formed Grey First and had caused Grey First to purchase the mortgage loans from a third-party lender in March 2020, had then caused Beacon Towers to default on the mortgage held by Grey First, and had then caused Grey First to institute foreclosure proceedings to obtain the commercial-office building for Grey First. As against both Peake and Grey First, Wyatt sought an injunction precluding Grey First from foreclosing or, in the alternative, seeking the cancellation of any foreclosure deed or the imposition of a constructive trust requiring Grey First to convey to Beacon Towers any title Grey First might have or obtain to the commercial-office building. According to Wyatt, Peake's purported scheme to obtain Beacon Towers' property for Grey First was an attempt to thwart the intent of the divorce judgment.

2200159 and 2200214

Also on June 3, 2020, Wyatt, Wyatt Properties, and Beacon Towers filed an emergency motion in the modification action seeking to stay the foreclosure sale by Grey First, which was scheduled for June 12, 2020; they filed a renewed emergency motion on June 9, 2020. Peake filed a response opposing the emergency motion to stay the foreclosure sale, as did Grey First. Judge Chappell held a hearing on the emergency motion to stay the foreclosure sale. On June 12, 2020, she entered an order granting the motion to stay the foreclosure sale until further order of the court, noting that in the divorce judgment she had ordered that Peake and Wyatt were to continue to own and manage Wyatt Properties and Beacon Towers and "all holdings" of those entities. On June 15, 2020, Grey First filed a motion to vacate the June 2020 order as moot on the ground that the foreclosure sale had been completed on June 12, 2020, less than one hour before the entry of the June 2020 order, and that Grey First had been the successful bidder at the foreclosure sale and had recorded its foreclosure deed in the Jefferson Probate Court. Also, on June 17, 2020, Grey First filed a motion to dismiss (actually, a renewed motion to dismiss) the remaining claims in the counterclaim against it.

2200159 and 2200214

On June 24, 2020, the Peake petitioners filed a motion seeking the transfer to the civil division of what they referred to as their business-tort claims against Wyatt and the counterclaim against Peake and Grey First. The Peake petitioners contended that such a transfer was authorized by § 12-11-11, "that jurisdiction over [the Peake petitioners'] business-tort allegations is more appropriate in [the civil division] and improper before [the domestic-relations division]," and that the domestic-relations division lacked jurisdiction over those claims because they did not "arise out of ... or concern any breach of the divorce judgment." The Peake petitioners further alleged that the counterclaim was due to be transferred to the civil division because it "rais[ed] similar questions of law and fact." They also stated that they had requested a jury trial regarding their claims and contended that they would be deprived of a jury trial if the business-tort claims were not transferred to the civil division. On June 26, 2020, Grey First filed a motion joining the Peake petitioners' motion to transfer as to the counterclaim asserted against it.

On July 22, 2020, Wyatt, Wyatt Properties, and Beacon Towers filed an amended counterclaim, which Wyatt subsequently verified, against

2200159 and 2200214

Peake and Grey First ("the amended counterclaim"). The amended counterclaim made additional allegations regarding the formation of Grey First and the actions taken by Peake and Grey First, including the foreclosure of the mortgage on the commercial-office building owned by Beacon Towers. According to the amended counterclaim, Peake had engaged in self-dealing as part of a scheme to thwart the terms of the divorce judgment. In addition to other relief, Wyatt requested that Judge Chappell hold Peake in civil contempt for her purported violation of the divorce judgment and that Peake be ordered to pay Wyatt not less than \$1,832,594.32 as damages for her alleged oppression and wrongful "squeeze out." The amended counterclaim also requested that Peake be ordered to pay Wyatt, Wyatt Properties, and Beacon Towers not less than \$3,665,188.45 for her alleged breaches of fiduciary duties and that Peake and Grey First be ordered to pay damages to Wyatt, Wyatt Properties, and Beacon Towers for unjust enrichment. Further, the amended counterclaim restated Beacon Towers' claims against Grey First requesting the imposition of a constructive trust, reformation of the

2200159 and 2200214

foreclosure deed, or vacation of the foreclosure deed on the ground of wrongful foreclosure.

On August 12, 2020, Judge Chappell entered an order declaring that she had reviewed the foreclosure deed and Grey First's motion to vacate her June 2020 order and that that order was "vacated and held moot." A few days later, Grey First filed a motion to dismiss the amended counterclaim filed by Wyatt, Wyatt Properties, and Beacon Towers. Grey First reasserted the grounds from its previous motion to dismiss, namely, that Wyatt, Wyatt Properties, and Beacon Towers had failed to state a claim against Grey First upon which relief could be granted and that the domestic-relations division lacked subject-matter jurisdiction over the counterclaim against Grey First because the claims purportedly did not have any relationship to the enforcement of the divorce judgment.

On August 20, 2020, Wyatt, Wyatt Properties, and Beacon Towers filed a response opposing Grey First's motion to dismiss and its request to transfer the amended counterclaim to the civil division. The following day, Judge Chappell held a hearing regarding the pending motions to transfer or to dismiss the business-tort claims and the amended

2200159 and 2200214

counterclaim. On October 13, 2020, Judge Chappell entered an order denying the motions to transfer, which she subsequently amended on October 15, 2020 (as amended, "the October 2020 order"). The October 2020 order stated, in part:

"FIRST: That the [Peake petitioners] originally filed the action subject to the instant Motion in the Circuit Court of Jefferson Count, Civil Division in CV-2019-904525.00 on October 10, 2019. On [Wyatt's] Motion to Dismiss, Judge ... Hatcher ruled that 'all of [the Peake petitioners'] claims arise from alleged breaches of the Agreement of the Parties that was "ratified and approved and made a part of the [divorce judgment]" ' and that the Civil Division 'has no jurisdiction over' the claims brought by [the Peake petitioners]. ... [The Peake petitioners] did not seek review of Judge Hatcher's Order and the action was transferred to this Court.

"SECOND: That the [Peake petitioners] filed [the January 2020 amended complaint] ... in this Court on January 21, 2020. In Count I ..., [the Peake petitioners] seek modification of the [divorce judgment] to remove ... Wyatt as a member of Wyatt Properties .... In Count II ..., [the Peake petitioners] seek damages for Wyatt's alleged breaches of fiduciary duty and violations of the [divorce judgment]. ... In Count III ..., [the Peake petitioners] seek modification of the [divorce judgment] and removal of Wyatt as a member of Wyatt Properties ... because the parties are deadlocked and because of the other alleged actions pled in support of Counts I and II.

"THIRD: That [Wyatt], in response, seeks an Order of Contempt against [Peake] for violation of the [divorce

judgment] in relation to [her] disposition of the subject real property as well as damages for squeeze out and breach of fiduciary duty based on actions that [Wyatt] asserts are violations of the [divorce judgment]. Against ... Grey First, ... Wyatt seeks to restore the subject real property to Beacon Towers, which if successful, would result in [Peake] and [Wyatt] each having a fifty percent (50%) interest, directly or indirectly, in said property as set out in the [divorce judgment].<sup>[7]</sup>

"FOURTH: That each of the claims, counterclaims, and third-party claims in this case seek either an interpretation, modification or enforcement of the [divorce judgment] or they seek damages or equitable remedies based on alleged violations of the [divorce judgment].

"FIFTH: That, because this Court entered the [divorce judgment], it has exclusive subject-matter jurisdiction of all matters arising from said judgment. The relief each party seeks in this action must come from this Court by way of the interpretation, modification and/or enforcement of the [divorce judgment] and this Court's continued equitable analysis of the respective parties' conduct.

"SIXTH: That ... the interpretation, modification or enforcement of the [divorce judgment] being 'traditionally an

---

<sup>7</sup>Although the October 2020 order does not specifically reference the damages claim against Grey First that was included in the amended counterclaim, the reference to the contempt claim against Peake confirms that Judge Chappell was considering the claims in the amended counterclaim when she entered the October 2020 order.

2200159 and 2200214

equitable proceeding,' the [Peake petitioners are]<sup>[8]</sup> not entitled to a trial by jury. See Evans v. Evans ..., 547 So. 2d 459 (Ala. 1989)."

On November 5, 2020, Judge Chappell entered an order denying Grey First's motion to dismiss the counterclaim against it. In part, the November 2020 order stated that Wyatt had filed a verified counterclaim against Grey First seeking to restore title to the commercial-office building at issue to Beacon Towers and that the counterclaim satisfied the requirements of Rule 23.1, Ala. R. Civ. P. See also Ala. Code 1975, § 10A-5A-9.02 et seq. (discussing a derivative action by a member of a limited-liability company). The November 2020 order further stated that the commercial-office building, which was owned by Beacon Towers when the settlement agreement was incorporated into the divorce judgment, had been subject to the jurisdiction of the domestic-relations division when Judge Chappell entered the divorce judgment and that the domestic-relations division had jurisdiction to address whether that property should be restored to Beacon Towers under the circumstances presented.

---

<sup>8</sup>We have interpreted Judge Chappell's use of the singular "Plaintiff" as a mistake and that she intended to refer to the Peake petitioners.

2200159 and 2200214

The Peake petitioners filed a petition for the writ of mandamus regarding the denial of their motion to transfer the business-tort claims and the amended counterclaim and the denial of their request for a jury trial as to their business-tort claims. Grey First has joined the Peake petitioners' petition as to the transfer issue and has filed a separate petition for the writ of mandamus as to the denial of its motion to dismiss for lack of subject-matter jurisdiction and as to Wyatt's purported failure to satisfy the requirements for pleading a derivative claim.

" 'Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner 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) properly invoked jurisdiction of the court.' "

Ex parte Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003) (quoting Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)). An order denying a request to dismiss a case for lack of subject-matter jurisdiction is subject to mandamus review, see, e.g., Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060, 1064 (Ala. 2014), as is an order denying a demand for a jury trial when a jury trial is otherwise available under

2200159 and 2200214

pertinent law, see, e.g., Ex parte Acosta, 184 So. 3d 349, 351 (Ala. 2015). Mandamus review is also available regarding whether a party has satisfied the pleading requirements for a derivative claim. See Ex parte 4tdd.com, Inc., 306 So. 3d 8, 18 (Ala. 2020).

According to the Peake petitioners, the domestic-relations division lacks subject-matter jurisdiction over the business-tort claims and the amended counterclaim against Peake because, they assert, those claims purportedly do not arise out of or relate to the divorce judgment, at least some of those claims arose after the entry of the divorce judgment, and those claims include some claims by or against legal entities that were not parties to the divorce judgment. Although we do not disagree that certain of the claims made by the Peake petitioners and in the amended counterclaim may include acts that constitute torts, regardless of whether those acts also violate the divorce judgment, and that some of the claims involve parties who were not formally parties to the divorce judgment, we cannot agree that the domestic-relations division lacks subject-matter jurisdiction over those claims and, thus, must transfer them to the civil

2200159 and 2200214

division.<sup>9</sup> The argument of the Peake petitioners is premised on an erroneous understanding of the subject-matter jurisdiction of the domestic-relations division.

"Subject-matter jurisdiction concerns a court's power to decide certain types of cases." Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006). The domestic-relations division, like the civil division, is a division of the Circuit Court of the 10th Judicial Circuit, i.e., Jefferson County. See Ala. Code 1975, § 12-11-2(10) (describing the 10th Judicial Circuit as "Jefferson" County); Ala. Code 1975, § 12-17-20(8) (describing the domestic-relations division among other circuit-court divisions in the 10th

---

<sup>9</sup>Judge Chappell appears to have erred by concluding that an act by Wyatt or Peake that violated of the terms of the divorce judgment would preclude filing a tort claim for the same act. That is clearly not the case. For example, a spouse's physical altercation with the other spouse might support a contempt claim for violation of a no-contact order in a divorce judgment and also supply the grounds for a tort claim alleging battery. See, e.g., Coleman v. Coleman, 566 So. 2d 482, 485 (Ala. 1990) (stating that a spouse's conduct may supply grounds for a divorce and also provide grounds for a tort action for damages). That said, we also recognize that certain of the tort claims at issue in the underlying proceeding might ultimately fail on the merits (for example, for lack of proof of damages or because such claims were the subject of the release provision), depending on Judge Chappell's decisions regarding the interpretation, clarification, and enforcement of the divorce judgment.

2200159 and 2200214

Judicial Circuit). Each judicial circuit has one circuit court, and that circuit court is a court of general, original jurisdiction in matters of both law and equity. See Ala. Const. 1901 (Off. Recomp.), Art. VI, § 142(a) ("The state shall be divided into judicial circuits. For each circuit, there shall be one circuit court having such divisions and consisting of such number of judges as shall be provided by law.") and § 142(b) ("The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law. ..."); Ala. Code 1975, §§ 12-11-30 & 12-11-31.

As the supreme court explained in Ex parte Boykin, 611 So. 2d 322, 326 (Ala. 1992), "[c]reation of a division within each circuit court to hear matters exclusive to that division means that only certain judges within a circuit court will decide those matters germane to a division."

Nevertheless, the supreme court continued:

"Each circuit court as a whole has jurisdiction over equitable matters, ... just as each circuit court has jurisdiction over civil [and] criminal ... matters .... Jurisdiction over divisional matters is still vested in the entire circuit court; a judge receiving a case that belongs in another division may transfer that case to the proper division, but if the transfer is not made, the original judge still retains jurisdiction over the case. See

2200159 and 2200214

Ex parte Birmingham So. R.R., 473 So. 2d 500, 502 (Ala. 1985)  
(Shores, J., concurring)."

611 So. 2d at 326 (emphasis added); see also note 5, supra.

Notwithstanding the foregoing, the Peake petitioners have attempted to support their arguments by relying heavily on discussions regarding jurisdiction in this court's decisions in Ex parte Renasant Bank, 185 So. 3d 1134 (Ala. Civ. App. 2015), Hill v. Hill, 89 So. 3d 116 (Ala. Civ. App. 2010), and Stroeker v. Harold, 111 So. 3d 138 (Ala. Civ. App. 2012), while attempting to distinguish Turenne v. Turenne, 884 So. 2d 844 (Ala. 2003), on the ground that some of the claims at issue may not arise out of the divorce judgment. We reject their understanding of Turenne and find that decision controlling as to the present petitions, particularly in light of the supreme court's holdings in Ex parte Seymour and Ex parte Boykin. See also Ala. Code 1975, § 12-3-16 ("The decisions of the Supreme Court shall govern the holdings and decisions of the courts of appeals ....").<sup>10</sup>

---

<sup>10</sup>We acknowledge that, although our precedents have not always been clear, the concept of "subject-matter jurisdiction" should not be confused with the concept of a court's "exclusive jurisdiction," particularly not a court's exclusive jurisdiction over a claim involving the interpretation, clarification, or enforcement of its own judgment, a

2200159 and 2200214

Like the underlying proceedings that are the subject of the mandamus petitions before us, Turenne involved a dispute regarding a settlement agreement that had been incorporated into the divorce judgment at issue in that case. The agreement at issue in Turenne included provisions governing certain business entities owned by Roger Turenne or Patti Turenne. Roger commenced an action in the Domestic Relations Division of the Montgomery Circuit Court asserting that Patti had violated the parties' settlement agreement. The Domestic Relations Division of the Montgomery Circuit Court dismissed the action on the ground that the issues related to the operation of the parties' businesses and stated that Roger could seek relief from the Civil Division of the

---

jurisdiction that all respective courts inherently possess. See Dunn v. Dunn, 12 So. 3d 704, 709 (Ala. Civ. App. 2008) ("[A] trial court has the inherent power to interpret, clarify, and enforce its orders and judgments."). The fact that a court does not have "exclusive jurisdiction" as to a certain type of claim does not mean that it lacks subject-matter jurisdiction over that type of claim or that it is a court of limited jurisdiction rather than a court of general jurisdiction; the exclusive-jurisdiction question is merely directed toward distinguishing between whether only one court (exclusive jurisdiction) or multiple courts (concurrent jurisdiction) have subject-matter jurisdiction as to the type of claim at issue.

2200159 and 2200214

Montgomery Circuit Court. 884 So. 2d at 845-46. Thereafter, Roger, his revocable trust, and his wholly owned business entity commenced an action in the Civil Division of the Montgomery Circuit Court against Patti, her revocable trust, her wholly owned business entities, and a business entity she owned with her son. The Civil Division of the Montgomery Circuit Court dismissed four of the five claims at issue, however, stating that they were within the exclusive jurisdiction of the Domestic Relations Division of the Montgomery Circuit Court because they arose out of the parties' settlement agreement; that dismissal order was certified as final pursuant to Rule 54(b), Ala. R. Civ. P. 884 So. 2d at 845-46.

Roger, his trust, and his business appealed the dismissal order entered by the Civil Division of the Montgomery Circuit Court. After discussing the parties' settlement agreement and noting that that agreement had merged into the parties' judgment of divorce, which remained subject to the equity power of the Domestic Relations Division of the Montgomery Circuit Court, the supreme court discussed the law applicable to courts having concurrent jurisdiction and the principle that

2200159 and 2200214

the first court to take cognizance of the cause had the exclusive right to proceed. The supreme court then stated:

"[J]urisdiction of all matters arising from the divorce judgment, including the provisions of the marital settlement agreement, remains with the domestic relations division of the Montgomery Circuit Court, which, in a proper exercise of its jurisdiction, had entered a judgment divorcing Roger ... and Patti ....

"We note that there is no claim that can be enforced on a contract theory, i.e., count III (breach of contract) and count V (anticipatory breach of contract), because the settlement agreement was merged into the divorce judgment. ... However, the fraud actions, i.e., count I (fraudulent inducement) and count II (suppression of material facts), are within the ancillary jurisdiction of the domestic relations division of the Montgomery Circuit Court."

Id. at 849 (emphasis added); cf. Coleman v. Coleman, 566 So. 2d 482, 485-86 (Ala. 1990) (acknowledging that a tort claim involving a husband and a wife could have been pursued in the parties' divorce case). The supreme court then affirmed the dismissal order entered by the Civil Division of the Montgomery Circuit Court, commenting that neither division's dismissal had been with prejudice and that nothing prevented the refiling of the action in the Domestic Relations Division of the Montgomery

2200159 and 2200214

Circuit Court or the enforcement of the divorce judgment by that division.  
Id. at 850.

To be clear, consistent with Ex parte Boykin and Turenne, we are not holding that the civil division lacked jurisdiction over all claims that were alleged in the civil action, particularly to the extent that those claims did not involve the interpretation, clarification, or enforcement of the divorce judgment or did not otherwise arise from the divorce judgment; Judge Hatcher's December 2020 order is not before us, however, and the Peake petitioners failed to seek timely mandamus review regarding that transfer order.<sup>11</sup> See Rule 21(a)(3), Ala. R. App. P. We also are not

---

<sup>11</sup>Aside from consideration of the effect, if any, of the September 2019 amended-modification petition, the Peake petitioners waived any error regarding the transfer of their claims to the domestic-relations division because that division of the circuit court has subject-matter jurisdiction to consider their claims and the Peake petitioners submitted those claims to the domestic-relations division in the January 2020 amended complaint, rather than seeking a review of Judge Hatcher's December 2020 order. See, e.g., Sheffield v. Sheffield, 350 So. 2d 1056, 1058 (Ala. Civ. App. 1977); see also Ex parte Central of Georgia Ry. Co., 243 Ala. 508, 513, 10 So. 2d 746, 750 (1942) (stating that the right to transfer may be waived); Ex parte Pruitt, 207 Ala. 261, 262, 92 So. 426, 428 (1922) ("The court being competent to try the cause, the parties can always waive the absence of formal jurisdiction of their persons and of the particular proceeding by giving their consent thereto in any appropriate way.").

2200159 and 2200214

holding that Judge Chappell lacked the authority to transfer to the civil division any claims that did not involve the interpretation, clarification, or enforcement of the divorce judgment or that did not arise out of the divorce judgment. See Boykin, supra; see also Ex parte Howle, 776 So. 2d 133, 133-34 (Ala. 2000) (noting that the "circuit judge severed [the damages claim for assault and battery from a divorce proceeding] and transferred [the damages claim] from the 'domestic relations division' of the circuit court to the 'civil division' "). Further, we are not holding that the Peake petitioners and Grey First might not otherwise have had some right to a transfer of certain claims based on some divisional-assignment law or some law pertinent to the joinder or severance of claims; those matters are not jurisdictional. We are merely holding that the domestic-relations division does not lack subject-matter jurisdiction over the business-tort claims or the amended counterclaim simply because those claims may go beyond a claim seeking the interpretation, clarification, or enforcement of the divorce judgment or may not arise out of the divorce judgment; because those claims arose, at least in part, after the entry of the divorce judgment; or because those claims include claims by or against

2200159 and 2200214

legal entities that were not parties to the divorce judgment.<sup>12</sup> Those matters are not pertinent to the issue whether the domestic-relations division has subject-matter jurisdiction over the business-tort claims and the amended counterclaim, which are simply claims that have been joined in an action including claims for modification of child custody and child support, along with other claims that clearly are within the exclusive jurisdiction of the domestic-relations division, such as whether certain of the alleged claims are precluded by the release provision, whether Wyatt or Peake might have violated the terms of the divorce judgment, and whether the divorce judgment is due to be clarified and enforced. See Rule 18(a), Ala. R. Civ. P. ("A party asserting a claim to relief as an original claim [or] counterclaim ... may join, either as independent or as alternate claims, as many claims either legal or equitable, or both, as the

---

<sup>12</sup>Although not determinative for purposes of our conclusion, Peake's status as an agent of Wyatt Properties, Beacon Towers, and Grey First is a complicating factor regarding at least some of her alleged violations of the divorce judgment. See Comment to Ala. Code 1975, § 10A-5A-1.03 ("If the member is an agent of the company, e.g., an officer or other agent, then ... notice may be imputed to the limited liability company via the law of agency.").

2200159 and 2200214

party has against an opposing party."); cf. Weil v. Lammon, 503 So. 2d 830, 832 (Ala. 1987) ("With the merger of law and equity, and given the liberal joinder allowed by the Alabama Rules of Civil Procedure, there is no reason why all known claims between spouses in a divorce action should not be settled in that litigation."). See also Rule 19 and Rule 20, Ala. R. Civ. P., governing joinder of parties, and Rule 42(b), Ala. R. Civ. P., governing separate trials, particularly for purposes of preserving the right to a jury trial.<sup>13</sup> Also, the foregoing principles apply with equal force to Grey First's argument regarding the amended counterclaim against it; the domestic-relations division does not lack subject-matter jurisdiction over the claims against Grey First.

Based on the foregoing, the Peake petitioners and Grey First have not demonstrated a clear right to legal relief regarding Judge Chappell's

---

<sup>13</sup>Mandamus review is available to challenge a trial court's ruling on a motion to sever claims. Ex parte American Heritage Life Ins. Co., 46 So. 3d 474, 479 (Ala. 2010). However, even assuming Judge Chappell should sever certain claims, the issue would still remain whether they should be transferred to the civil division. See Ex parte N.G., [Ms. 1190390, Sept. 4, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2020) ("Under § 12-11-11, courts within the same county have the authority to transfer cases both 'horizontally' to courts of like jurisdiction and 'vertically' to 'lower' and 'higher' courts.").

2200159 and 2200214

order refusing to transfer or to dismiss the business-tort claims or the amended counterclaim on jurisdictional grounds.

The Peake petitioners also argue that Judge Chappell erred by denying their motion to transfer because, they say, they have a right to a jury trial regarding their business-tort claims.<sup>14</sup> Judge Chappell concluded that the Peake petitioners were not entitled to a jury trial because, according to her, all the claims at issue "seek either an interpretation, modification or enforcement of the [divorce judgment] or they seek damages or equitable remedies based on alleged violations of the [divorce judgment]," and "the interpretation, modification or enforcement of the [divorce judgment] being 'traditionally an equitable proceeding,' the [Peake petitioners are] not entitled to a trial by jury. See Evans v. Evans ..., 547 So. 2d 459 (Ala. 1989)."

---

<sup>14</sup>The materials before us do not reflect that the Peake petitioners or Grey First have filed an answer to the amended counterclaim or that they otherwise have demanded a jury trial as to the counterclaim, although they indicated that they intended to do so. Thus, we limit our discussion to the business-tort claims.

2200159 and 2200214

As noted above, Judge Chappell appears to have erred regarding the premise for her denial of the Peake petitioners' request for a jury trial, i.e., that all claims involve only the interpretation, clarification, or enforcement of the divorce judgment or seek remedies based only on violations of the divorce judgment. See note 9, supra. The Peake petitioners, having demanded a jury trial, would be entitled to one on their respective tort claims to the extent that those claims are not affected by the release provision or some other provision of the divorce judgment, an issue that we will not address. See Rule 38(a), Ala. R. Civ. P.; Coleman v. Coleman, 566 So. 2d at 485-86 (stating that, though "trial by jury is not provided for in divorce actions in Alabama, the trial court could sever the claim for damages and set the severed case for a jury trial. Rule 21, A[la]. R. Civ. P."); see also Ex parte Thorn, 788 So. 2d 140, 144-45 (Ala. 2000) (discussing the necessary adjustments that a trial court must make to accommodate the right to a jury trial when the proceeding involves both equitable and legal claims).

Notwithstanding the foregoing, the Peake petitioners have provided us with only a two-paragraph conclusory argument that does not even

2200159 and 2200214

discuss the fact that the denial of a jury demand is subject to mandamus review. The only authority they cite in support of their argument is Osborne v. Osborne, 216 So. 3d 1237, 1246 (Ala. Civ. App. 2016), a case involving the issue of the doctrine of res judicata, which states that "a divorcing spouse should not be required to include tort claims in a divorce action, because to do so would deprive each party of his or her right to have a tort action tried before a jury." The Peake petitioners have cited no authority that supports the conclusion that Judge Chappell cannot make any necessary arrangements for a jury trial on the business-tort claims, see Coleman, supra, which is the assumption on which the Osborne court based its ruling when considering whether the doctrine of res judicata would bar the claim at issue. Under the circumstances, we consider the Peake petitioners' argument to be inadequately made, see Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001) (discussing the requirements of Rules 21(a) and 28(a), Ala. R. App. P.), and we will not further address whether Judge Chappell's interlocutory ruling as to the jury-trial issue should be corrected at this point in the underlying proceedings.

2200159 and 2200214

Finally, we see no need for an extended discussion as to Grey First's argument that Wyatt failed to satisfy the requirements for pleading a derivative claim. Section 10A-5A-9.03(a), Ala. Code 1975, provides that a member of a limited-liability company may maintain a derivative action if the member was a member when the pertinent act or omission occurred and the member "fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company." § 10A-5A-9.03(a)(1). Section 10A-5A-9.04(b), Ala. Code 1975, provides that "[a] member may commence a derivative action in the right of the limited liability company" without first making demand on the limited-liability company, "if ... a demand ... would be futile." The complaint in a derivative action "must state with particularity ... why the demand should be excused as futile." Ala. Code 1975, § 10A-5A-9.05(b). The Comments to §§ 10A-5A-9.03 through -9.05 state that those sections were derived from Rule 23.1, Ala. R. Civ. P., which includes a verification requirement.

In her November 2020 order denying Grey First's motion to dismiss Wyatt's counterclaim, Judge Chappell determined that Wyatt had

2200159 and 2200214

satisfied the requirements for filing a derivative action, including establishing the futility of making a written demand that would have essentially required Peake to agree for Wyatt Properties and Beacon Towers to pursue claims against her. As noted above, the counterclaim and amended counterclaim were verified, and based on the materials before us, including the pleadings reflecting the clear self-interests and antagonism between Wyatt and Peake as the only members of Wyatt Properties, which was in turn the sole member of Beacon Towers, we cannot conclude that Judge Chappell's determination was unsupported by the submissions before her. See Shelton v. Thompson, 544 So. 2d 845, 849-51 (Ala. 1989) (discussing the history behind and limitations regarding the derivative-action requirements of Rule 23.1, Ala. R. Civ. P., including when sufficient facts are pleaded indicating the futility of making demand). Based on the foregoing, we reject Grey First's argument that Judge Chappell exceeded her discretion by concluding that Wyatt had satisfied the requirements for pleading a derivative claim.

The Peake petitioners' petition for the writ of mandamus regarding the denial of their requests to transfer to the civil division or to dismiss

2200159 and 2200214

the business-tort claims and the amended counterclaim and regarding the denial of their request for a jury trial is hereby denied. Likewise, Grey First's petition for the writ of mandamus regarding the denial of its request to transfer to the civil division or to dismiss the amended counterclaim and regarding the determination that Wyatt had satisfied the requirements for filing a derivative claim is hereby denied.

2200159 -- PETITION DENIED.

2200214 -- PETITION DENIED.

Thompson, P.J., and Moore and Hanson, JJ., concur.

Fridy, J., recuses himself.