

Rel: January 16, 2026

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2025-2026

CL-2025-0574

Ex parte The Shires Homeowners Association, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: John M. Clark

v.

The Shires Homeowners Association, Inc.)

(Shelby Circuit Court: CV-25-900362)

BOWDEN, Judge.

This case is before the court on the "Amended Petition for Writ of Mandamus" ("the amended mandamus petition") filed by The Shires Homeowners Association, Inc. ("the HOA"), the defendant in two actions

(case nos. CV-2022-475 and CV-25-900362) commenced by John M. Clark. The HOA is seeking an order from this court compelling the Shelby Circuit Court ("the circuit court") to dismiss Clark's complaint in case no. CV-25-900362 ("the second action") on the ground that it was filed in violation of Ala. Code 1975, § 6-5-440, which prohibits simultaneous actions for the same cause against the same party. We grant the petition and issue the writ.

BACKGROUND

These parties previously appeared before this court in Shires Homeowners Ass'n, Inc. v. Clark, [Ms. CL-2024-0797, Mar. 14, 2025] ___ So. 3d ___ (Ala. Civ. App. 2025), in which the HOA appealed from a summary-judgment entered in favor of Clark in case no. CV-2022-475 ("the first action"). In Shires, this court set forth the following facts and procedural history concerning that case, which are relevant to the present amended mandamus petition:¹

¹"'In considering a mandamus petition, we must look at only those facts before the trial court.'" Ex parte ADT Sec. Servs., Inc., 933 So. 2d 343, 345 (Ala. 2006)(quoting Ex parte American Res. Ins. Co., 663 So. 2d 932, 936 (Ala. 1995))(emphasis omitted). Additionally, ""'[a] circuit court [ordinarily] cannot take judicial notice of its record in another case for the purpose of supplying evidence in the case at hand, as the record in the other case must be introduced in evidence if it is to be considered as

"On June 7, 2022, Clark filed in the small-claims division of the Shelby District Court ('the district court') a complaint against the HOA. Clark asserted that the HOA had caused an invalid lien to be placed on Clark's property ('the property') and that, therefore, the HOA owed Clark \$3,746. Clark also requested an award of court costs in the amount of \$223. On June 16, 2022, the HOA filed an answer and a counterclaim alleging that Clark had breached his agreement with the HOA and had failed to pay HOA dues. The HOA stated that Clark owed it \$4,982, representing \$3,746 in unpaid dues, plus \$1,236 in attorney fees. On September 9, 2022, Clark filed a reply to the counterclaim.

"....

"On December 2, 2022, the district court held a trial and entered a judgment in favor of the HOA with respect to both

evidence."'" Ex parte DuPont De Nemours, Inc., [Ms. SC-2024-0514, Apr. 4, 2025] ____ So. 3d ___, ___ n. 9 (Ala. 2025). However, "'[w]hen a party refers to another proceeding or judgment of a court in his pleading before that same court, the court on motion to dismiss may take judicial notice of the entire proceeding.'" Id. at ____ (quoting Lesley v. City of Montgomery, 485 So. 2d 1088, 1093 (Ala. 1986)). As discussed, infra, Clark filed two complaints against the HOA that commenced two separate actions, both before the same circuit-court judge. Furthermore, Clark's second complaint incorporated by reference the allegations in his first complaint, and the circuit court referenced the first action in an order entered in the second action. The circuit court therefore "clearly took judicial notice of [the proceedings] in the first action, which led to the appeal" in Shires Homeowners Ass'n, Inc. v. Clark, [Ms. CL-2024-0797, Mar. 14, 2025] ____ So. 3d ____ (Ala. Civ. App. 2025). Ex parte DuPont, ____ So. 3d at _____. Accordingly, "we see no reason why we cannot take judicial notice of [the proceedings]" in Shires. Id.; cf. Morrow v. Gibson, 827 So. 2d 756, 762 (Ala. 2002) ("This court takes judicial notice or has judicial knowledge of contents of its records with reference to its previous consideration of litigation presented before it." (citation omitted)).

the complaint and the counterclaim; the district court specifically rendered a judgment in the amount of \$3,746 in favor of the HOA. On December 16, 2022, Clark filed his notice of appeal to the circuit court.

"On August 14, 2023, the HOA filed in the circuit court a motion for a summary judgment, along with a brief and evidentiary materials in support thereof. Clark thereafter filed in the circuit court a motion for a summary judgment, requesting that the circuit court declare the HOA's liens void and deny the HOA's counterclaim. The HOA then responded to Clark's summary-judgment motion. Subsequently, the HOA filed a supplement to its summary-judgment motion.

"On May 28, 2024, the circuit court entered a summary judgment in favor of Clark that declared the liens void and directed that the liens be released. On June 6, 2024, the HOA filed a motion to vacate the circuit court's judgment pursuant to Rule 59(e), Ala. R. Civ. P., and to declare the judgment void pursuant to Rule 60(b)(4), Ala. R. Civ. P. The HOA filed an amended motion the next day. The HOA then filed a petition for a writ of mandamus with this court, and that petition was denied by order on August 2, 2024. See Ex parte Shires Homeowners Ass'n, (No. CL-2024-0445, Aug. 2, 2024). To the extent that the HOA's June 6, 2024, motion sought relief based on Rule 59(e), that motion was denied by operation of law on September 4, 2024. See Rule 59.1, Ala. R. Civ. P. On October 14, 2024, the HOA filed a notice of appeal with this court."

Shires, ___ So. 3d at ___ (footnotes omitted).

On appeal in Shires, this court dismissed the HOA's appeal with instructions, stating:

"Because the substance of Clark's complaint was a request for declaratory relief, the district court did not acquire

jurisdiction over the action, and its judgment is void. See [Hargett v. Blue Cross Blue Shield of Alabama, 68 So. 3d 837, 840 (Ala. Civ. App. 2011)]. Because the district court's void judgment would not support an appeal to the circuit court, 'the circuit court's judgment is also void.' See id.

"The HOA has appealed to this court from a void judgment, and, therefore, this court does not have jurisdiction over the appeal. See id. In accordance with Hargett, we dismiss the HOA's appeal, albeit with instructions to 'the circuit court and the district court to vacate their respective judgments in this case.'

68 So. 3d at 840."

Id. at ___. This court's decision was released on March 14, 2025.

On March 17, 2025, before the certificate of judgment was entered by this court in Shires, the circuit court entered the following order in the first action:

"This order is entered in compliance with the Alabama Court of Civil Appeals decision in case number CL-2024-0797. It is therefore ORDERED:

"1. All Orders entered by this court after the transfer to circuit court in case number CV-2022-475 [sic].

"2. Exhibit 'A' to this order is a copy of the district court order entered in compliance with the Alabama Court of Civil Appeals' decision.

"3. The remaining case number with all orders vacated shall retain the same case number and the circuit court filing fee is hereby waived. The parties have paid in previous cases and should not be charged again. All previous filing fees shall be credited

"4. This case is hereby set for STATUS to hear motions and select a trial date on July 1, 2025 at 9:00 a.m."

(Capitalization in original.) On April 2, 2025, this court issued a certificate of judgment in Shires.

On April 3, 2025, the HOA filed a motion in the circuit court to strike the circuit court's March 17, 2025, order as void based on the fact that this court had not yet issued its certificate of judgment at the time the circuit court entered its order. The HOA further argued that, because this court had determined that the circuit court did not have jurisdiction over the first action, all the circuit court could do was dismiss that action.

On April 11, 2025, Clark filed a new complaint against the HOA in the circuit court, which commenced the second action. Clark alleged in the new complaint that the circuit court "has already determined that the liens filed by [the] HOA are void and due to be released. It is only because the district court lacked jurisdiction before the case was brought before [the circuit] court that its judgment was voided." Accordingly, Clark requested that the circuit court "again declare the liens ... void" and "again order [the] HOA to release the said liens forthwith."

On April 23, 2025, the circuit court entered in the first action an order that is identical to the March 17, 2025, order; therefore, the April

23, 2025, order did not dismiss the first action but, rather, ordered the parties to appear at a status hearing on July 1, 2025.

On April 24, 2025, the HOA filed a mandamus petition with this court, which pertained to the first action and was docketed as case no. CL-2025-0291. In its petition, the HOA argued that the circuit court had the authority only to dismiss the first action and that the March 17, 2025, order that it had entered in that action was therefore void. The HOA requested that this court order the circuit court to vacate its March 17, 2025, order and to dismiss the first action.

On May 7, 2025, the HOA filed in the circuit court a motion to dismiss the second action. The HOA argued that the circuit court lacked jurisdiction over the second action based on § 6-5-440.

On May 14, 2025, in response to the HOA's mandamus petition, this court, in case no. CL-2025-0291, again directed the circuit court to vacate all previous orders entered in the first action and to dismiss that action. On May 15, 2025, the circuit court entered an order in the first action making it clear that all of its previous orders entered in that action were vacated and that it was dismissing the action.

On July 15, 2025, the HOA filed in the second action a motion requesting that the circuit court rule on the HOA's pending motion to dismiss that action. On July 21, 2025, the HOA filed a petition for a writ of mandamus with this court, although the circuit court had not yet ruled on the HOA's motion to dismiss.

However, on July 22, 2025, the circuit court entered the following order in the second action:

"1. The Plaintiff Clark filed this action on April 11, 2025. ... Clark already had another action pending (case no. 58-CV-2022-000475) on this same subject matter when he filed this case in this Court. The first case was not dismissed until May 15, 2025 -- 34 days after this second case was filed.

"2. Ala. Code 1975 § 6-5-440 specifically states that if two actions on the same subject matter are commenced at different times then 'the pendency of the former is good defense to the latter.' ... The whole purpose of ... § 6-5-440 is to avoid a defendant from having to defend two causes of action over the same subject matter in two different cases at the same time as occurred in the matter at bar. The Alabama Supreme Court has determined when ... § 6-5-440 applies, dismissal of the second cause of action is a mandatory rule and it is not discretionary. See Ex parte Canal Ins. Co., 534 So. 2d 582 (Ala. 1988), and Ex parte J.E. Estes Wood Co., 42 So. 3d 104 (Ala. 2010).

"3. Even if [Clark's] first case is subsequently dismissed as occurred here, if the defendant files its motion to dismiss the second case prior to the dismissal of the first case, ... § 6-5-440 mandates dismissal of the second cause of action as well. See Ford v. Bowden, 9 So. 2d 906 (Ala. 1942), and Nettles

v. Rumberger, Kirk & Caldwell, P.C., 276 So. 3d 663 (Ala. 2018). ... The ... HOA filed its motion to dismiss this second cause of action that is pending in this Court over the same subject matter on May 7, 2025 -- eight days prior to the dismissal of the first case.

"4. The Alabama Court of Civil Appeals found that the trial court in case number 58-CV-2022-000475 (the first case) had not acquired subject-matter jurisdiction over the underlying case and that it could only dismiss the case. 'Because the substance of Clark's complaint was a request for declaratory relief, the district court did not acquire jurisdiction over the action, and its judgment is void. Because the district court's void judgment would not support an appeal to the circuit court, the circuit court's judgment is also void. The HOA has appealed to this court from a void judgment, and, therefore, this court does not have jurisdiction over the appeal.' Shires Homeowners Association, Inc. v. Clark, [[Ms. CL-2024-0797, Mar. 14, 2025] ____ So. 3d ___, ___] (Ala. Civ. App. 2025) (internal citations omitted).

"5. 'A court without subject-matter jurisdiction "may take no action other than to exercise its power to dismiss the action Any other action ... is null and void.'" Chapman v. Gooden, 974 So. 2d 973, 984 (Ala. 2007) (citing State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999)) (quoting Beach v. Director of Revenue, 934 S.W.2d 315, 318 (Mo. Ct. App. 1996)).

"6. The first case (case no. 58-CV-2022-000475) is void ab initio. Because that action is a nullity and was from its inception, [the HOA's] argument as to the applicability of ... § 6-5-440 is without merit.

"For the foregoing reasons, [the HOA's] Motion to Dismiss is due to be and is hereby DENIED."

(Capitalization in original).

On July 23, 2025, the HOA filed the amended mandamus petition with the above-quoted order attached. On August 11, 2025, Clark was ordered to answer the HOA's amended mandamus petition. On August 25, 2025, Clark filed his answer and brief in response to the HOA's amended mandamus petition.

Despite the lengthy procedural history, the salient points in this mandamus proceeding can be summarized as follows:

- In Shires, this court ordered that the first action should be dismissed.²
- On remand, rather than dismiss the first action, the circuit court mistakenly continued the litigation.
- Before the first action was dismissed, Clark commenced an identical action against the HOA in the circuit court.

²We acknowledge that the instructions issued by this court in Shires did not directly call for the first action to be dismissed. Rather, this court ordered the district court and the circuit court to "vacate" their underlying judgments. Shires, ___ So. 3d at ___. However, this court determined in Shires that the district court did not have subject-matter jurisdiction to decide Clark's complaint and that an appeal to the circuit court was void for lack of subject-matter jurisdiction as well. Id. at ___. "If a directive or mandate is unclear, a trial court should consult the opinion of the appellate court." Ex parte W.L.K., 222 So. 3d 357, 359 (Ala. Civ. App. 2015). The only action either court could take after vacating its judgment would be a dismissal of the action. See Mills v. City of Opelika, 320 So. 3d 554 (Ala. 2020).

- From April 11 to May 15, both actions were pending in the circuit court.

ANALYSIS

""A writ of mandamus is an extraordinary remedy" that is appropriate "when the petitioner can show (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 State Farm Fire & Cas. Co., 320 So. 3d 550, 552 (Ala. 2020) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001))."

Ex parte Starr, 399 So. 3d 1010, 1013-14 (Ala. 2024).

"Mandamus is the appropriate remedy to correct a trial court's failure to properly apply § 6-5-440[, Ala. Code 1975]. See Ex parte Chapman Nursing Home, Inc., 903 So. 2d 813 (Ala. 2004); Ex parte Breman Lake View Resort, L.P., 729 So. 2d 849, 852 (Ala. 1999)." Ex parte Compass Bank, 77 So. 3d 578, 581 (Ala. 2011).

The HOA's amended mandamus petition is grounded entirely on the application of § 6-5-440, which states:

"No plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and against the same party. In such a case, the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously, and the pendency of the former is a good defense to the latter if commenced at different times."

It is undisputed that both actions involve the same cause of action against the same party. The second action was commenced by Clark on April 11, 2025. It is undisputed that the first action was still pending at that time. Although this court in Shires had issued its opinion on March 14, 2025, instructing the circuit court and the district court to vacate all previous orders entered in the first action on the basis that those courts lacked subject-matter jurisdiction, those instructions had not yet been followed by the circuit court when Clark commenced the second action.

"'Where a particular judgment is directed by the appellate court, the lower court is not acting of its own motion, but in obedience to the order of its superior. ... Public interests require that an end shall be put to litigation, and when a given cause has received the consideration of a reviewing court, has had its merits determined, and has been remanded with specific directions, the court to which such mandate is directed has no power to do anything but obey, otherwise, litigation would never be ended.'"

Kinney v. White, 215 Ala. 247, 249, 110 So. 394, 394 (1926) (citation omitted). An appellate-court opinion remanding a case with instructions to a trial court is an order to the trial court to do or not do something. It is not directly binding on the parties. It is binding on the trial court. The litigation is not ended until the trial court issues a final order. Ex parte Wharthouse Rest. & Oyster Bar, Inc., 796 So. 2d 316, 320 (Ala. 2001) ("In

order to terminate a civil action filed in an Alabama court, the court must enter a final judgment in that action.").

Although this court's certificate of judgment in Shires was issued on April 2, 2025, the necessary action by the circuit court to carry out this court's instructions did not take place until May 15, 2025, a full month after the second action was commenced. And, the appropriate order did not issue from the circuit court until this court had issued a second ruling in case. no CL-2025-0291 in response to the HOA's mandamus petition, essentially instructing the circuit court to carry out this court's previous ruling. Therefore, although this court had directed that the first action was to be dismissed, there is no question that the second action was commenced while the first case was still active and pending before the circuit court. See Nettles v. Rumberger, Kirk & Caldwell, P.C., 276 So. 3d 663, 671 (Ala. 2018) ("'[F]or the purposes of abatement, a case is pending until it has been finally adjudged.'" (citation omitted)).

Clark argues that when this court's certificate of judgment in Shires was issued, "the first case was no longer pending in any court." Clark's answer at 11. This is procedurally incorrect. "Jurisdiction of a case can be in only one court at a time." Reynolds v. Colonial Bank, 874

So. 2d 497, 503 (Ala. 2003). Once the certificate of judgment was issued, jurisdiction of the first action was returned to the circuit court. See Landry v. Landry, 91 So. 3d 88, 90 (Ala. Civ. App. 2012) ("[U]ntil an appellate court enters its certificate of judgment, its decision is not yet final and its jurisdiction over a case is not terminated."). Issuing the certificate of judgment reinvested the circuit court with jurisdiction to carry out the orders of this court, and the first action remained pending in the circuit court until that court dismissed it on May 15, 2025. See Dockery v. City of Jasper, 351 So. 3d 1078, 1082 (Ala. Civ. App. 2021) ("This court [on appeal] did not render a judgment in place of the [trial court's] June 2018 judgment. Instead, the trial court was required to enter a judgment addressing its disposition of the administrative appeal and the damages claims after it obtained jurisdiction of the case on remand." (emphasis added)).

Clark also argues that, once the certificate of judgment was issued, he was "no longer able to prosecute the first action and no further prosecution of that case occurred." Clark's answer at 11. In essence, Clark is essentially saying that, because it was a certainty that the first action would be dismissed eventually, commencing the second action

while the first action was still pending did not create a burden or any additional obligations on the HOA. Neither the facts nor the law interpreting § 6-5-440 support Clark's position.

To begin with, the facts clearly support the HOA's claim that it was forced to litigate both actions at the same time. On April 11, 2025, Clark commenced the second action. No stay was issued in that action, and, upon proper service, the HOA was immediately required to begin defending the action. On April 23, 2025, the circuit court entered an order in the first action that, among other things, required the HOA to appear for a status hearing on July 1, 2025, at 9:00 a.m. On May 7, 2025, the HOA filed a motion to dismiss in the second action. At that time, the HOA was actively defending the second action at the same time that it had been ordered to appear before the circuit court for a status hearing in the first action. This is exactly the scenario that § 6-5-440 seeks to prohibit. See Ex parte J.E. Estes Wood Co., 42 So. 3d 104, 111 (Ala. 2010) ("Even if the later filed action is stayed, the defendant remains obligated to stand before both courts prepared to defend against the same cause.").

Clark has not provided any authority that would suggest an exception to the prohibition against simultaneous actions in § 6-5-440

simply because an appellate court has issued an opinion requiring that the first action be dismissed. To the contrary, the Alabama Supreme Court, in explaining the rationale of one of its earlier decisions, stressed the requirement that, as long as both cases are pending, a defendant may plead a first action as a bar to a second action:

"In support of its reasoning, the Court stressed the fact that the nonfinal summary judgment entered in the third-party action could have been reconsidered and vacated by the trial court at any time before entry of a final judgment, which exposed the third-party defendants to the possibility of having to continue defending the third-party action while defending the same claims in the supplemental lawsuit."

Ex parte Honaker, 372 So. 3d 202, 205 (Ala. 2022) (emphasis added). In short, § 6-5-440 requires the abatement of the second action simply because the HOA was "exposed ... to the possibility of having to continue ... defending the same claims" in that action that it was also defending in the first action. Id. See Ex parte Canal Ins. Co., 534 So. 2d 582, 584 (Ala. 1988) ("The obvious intent of [§ 6-5-440, Ala. Code 1975,] is to forbid a party from prosecuting his claims in two courts simultaneously."). The fact that the first action was ordered to be dismissed by this court is of no consequence in the application of § 6-5-440 and the HOA's right to seek a dismissal of the second action. It is quite literally a matter of timing,

which is exclusively in a plaintiff's control. "'The plaintiff is,' after all, 'the "master of his complaint.''" Ex parte J.E. Estes Wood Co., 42 So. 3d at 111 (quoting Noland Health Servs., Inc. v. Wright, 971 So. 2d 681, 693 (Ala. 2007)).

"'[T]he institution of the second action' is, in itself, an 'offense or wrong, so to speak.' Interstate Chem. Corp. v. Home Guano Co., 199 Ala. 583, 584, 75 So. 166, 166 (1917) (emphasis added). The 'offense or wrong' that the statute seeks to prevent consists in the very 'existence simul et semel' of the second action. Foster [v. Napier], 73 Ala. [595,] 603 [(1883)]. The wrong committed '"was vexatious and, ill ab initio.'" Id. (emphasis added). The plaintiff might 'accomplish [an] atonement' for the offense 'by discontinuing his first action' before the plea in abatement is filed, but not afterward. Interstate Chem., 199 Ala. at 585, 75 So. at 166."

Ex parte J.E. Estes Wood Co., 42 So. 3d at 111 (footnote omitted).

CONCLUSION

When Clark commenced the second action, was a lawsuit involving the same cause and parties pending in the courts of this State? Clearly, that was the case, and the circuit court was therefore obligated to dismiss the second action pursuant to § 6-5-440. """Nemo debet bis vexari (si constet curiae quod sit) pro una et eadem causa," that is: "No man ought to be twice troubled or harassed (if it appear to the court that he is), for

one and the same cause."'" Ex parte J.E. Estes Wood Co., 42 So. 3d at 108 (citations omitted).

The HOA has established a clear legal right to a dismissal of the second action. Therefore, we grant the amended mandamus petition and direct the circuit court to vacate its July 22, 2025, order denying the HOA's motion to dismiss and to enter an order granting the HOA's motion to dismiss, without prejudice.

PETITION GRANTED; WRIT ISSUED

Moore, P.J., and Edwards, Hanson, and Fridy, JJ., concur.