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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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2180137

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**Ex parte RM Logistics, Inc.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Thomas M. Elliott**

**v.**

**RM Logistics, Inc.)**

**(Walker Circuit Court, CV-16-900366)**

THOMPSON, Presiding Judge.

On October 19, 2016, Thomas M. Elliott filed in the Walker Circuit Court ("the trial court") a complaint seeking

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an award of workers' compensation benefits from his employer, RM Logistics, Inc. ("RM Logistics"). RM Logistics answered the complaint and denied liability.

On June 26, 2017, RM Logistics filed in the trial court a motion to dismiss Elliott's complaint or, in the alternative, to transfer the action on the basis that it was filed in an improper venue. The trial court initially scheduled a hearing on that motion for August 2, 2017. However, the trial court rescheduled that hearing several times between July 2017 and January 2018. In February 2018, after the hearing on its motion had been rescheduled for the fourth time, RM Logistics filed in the trial court a motion asking that the hearing be conducted at the earliest possible date. On June 1, 2018, the trial court scheduled a hearing for September 5, 2018, but on July 20, 2018, it entered another order continuing that hearing until October 3, 2018. On October 1, 2018, the trial court entered an order that postponed the hearing on RM Logistics' June 26, 2017, motion for a sixth time. In its October 1, 2018, order, the trial court did not set a specific date for a hearing on RM Logistics' June 26, 2017, motion.

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On November 9, 2018, RM Logistics filed in this court a petition for a writ of mandamus asking this court to either order the trial court to dismiss Elliott's workers' compensation claim or order the trial court to transfer the action to the Shelby Circuit Court, which, RM Logistics contends, is the appropriate venue for Elliott's workers' compensation action. Neither Elliott nor the trial court has filed an answer to the petition for a writ of mandamus.

""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 Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). 'When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court [exceeded] its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner.' Id. Our review is further limited to those facts that were before the trial court. Ex parte American Resources Ins. Co., 663 So. 2d 932, 936 (Ala. 1995).""

"Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371, 373 (Ala. 2012) (quoting Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998))."

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Ex parte Nationwide Agribusiness Ins. Co., [Ms. 1171081, Nov. 16, 2018] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2018).

In its brief filed in this court, RM Logistics acknowledges that the trial court has not ruled on its June 26, 2017, motion to dismiss or to transfer.<sup>1</sup> Thus, there is no adverse ruling upon which RM Logistics can base that part of its petition for a writ of mandamus in which it argues that the trial court erred in denying its motion.

"This Court has never issued a writ of mandamus directing a trial court to transfer a case where the trial court has not yet ruled on a motion for a change of venue. Generally, the writ of mandamus will not issue to compel a trial court to exercise its discretion in a particular manner. Ex parte Ford Motor Credit Co., 607 So. 2d 169, 170 (Ala. 1992)."

Ex parte Monsanto Co., 794 So. 2d 350, 353-54 (Ala. 2001).  
See also Ex parte Veteto, 230 So. 3d 401, 403 (Ala. Civ. App. 2017) ("[T]here are no adverse rulings for this court to consider at this time. Moreover, it is the duty of this court to review the propriety of orders and judgments made in the

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<sup>1</sup>RM Logistics briefly contends that the trial court's failure to rule on its motion to dismiss or to transfer constitutes a denial of that motion. RM Logistics has failed to direct this court to any authority supporting that argument.

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trial court; this court cannot issue rulings on the motions pending before the trial court.").

However, RM Logistics points out that its June 26, 2017, motion to dismiss or transfer has been pending in the trial court for well over one year. RM Logistics argues that the delay in ruling on its motion has precluded it from moving forward in defending the workers' compensation action. Recently, our supreme court considered a case in which the trial court had decided to consider a motion to transfer on the basis of improper venue at a pretrial hearing scheduled less than three weeks before the scheduled hearing on the merits of the litigation. Ex parte Nationwide Agribusiness Ins. Co., supra. The defendants in that case, Nationwide Agribusiness Insurance Co. and The Hartford Steam Boiler Inspection and Insurance Co. (hereinafter referred to collectively as "the insurers") had argued "that the delay in hearing their motion would effectively require them to complete discovery, file dispositive and pretrial motions, conduct mediation, and prepare for trial, all before their change-of-venue motion was heard." \_\_\_ So. 3d at \_\_\_. After the trial court declined to rule on the insurers' motion to

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transfer, the insurers petitioned for a writ of mandamus, and our supreme court granted the petition. That court held that, generally, a trial court should not wait until a pretrial hearing or other later part of litigation to rule on a motion to transfer based on improper venue. Ex parte Nationwide Agribusiness Ins. Co., \_\_\_ So. 3d at \_\_\_. In reaching its holding, the supreme court explained that "[v]enue is a threshold matter, and, 'as a general rule, a trial court should rule on a motion alleging improper venue as expeditiously as possible.'" Ex parte Nationwide Agribusiness Ins. Co., \_\_\_ So. 3d at \_\_\_ (quoting Ex parte Windom, 776 So. 2d 799, 803 (Ala. 2000)). Similarly, in Ex parte International Paper Co., [Ms. 1170458, April 27, 2018] \_\_\_ So. 3d \_\_\_ (Ala. 2018), the trial court ordered the parties to conduct discovery and to prepare for trial, and it ruled that it would consider a motion to transfer based on improper venue only a few weeks before the scheduled trial on the merits. Our supreme court granted the defendant's petition for a writ of mandamus and directed the trial court to rule on the pending motion to transfer before the litigation proceeded. Ex parte International Paper Co., supra.

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In this case, the motion to dismiss or to transfer on the basis of improper venue has been pending since June 26, 2017, i.e., for well over a year. The trial court has continued the hearing on that motion six times, and in its most recent order postponing consideration of the motion it did not reschedule the hearing on the motion. Given the facts of this case and the length of time the motion has been pending, we conclude that RM Logistics is entitled to relief; we, therefore, grant its petition for a writ of mandamus, and we direct the trial court to rule as expeditiously as possible on RM Logistics' pending motion to dismiss or to transfer.

PETITION GRANTED; WRIT ISSUED.

Pittman, Moore, and Donaldson, JJ., concur.

Thomas, J., concurs in the result, with writing.

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THOMAS, Judge, concurring in the result.

Although I agree that the writ of mandamus is due to be issued, I would do so on the ground that the trial court is running afoul of its statutory duty to try workers' compensation cases expeditiously. See Ala. Code 1975, § 25-5-88 (stating that "all civil actions filed hereunder shall be preferred actions and shall be set down and tried as expeditiously as possible").