

SUPREME COURT OF ALABAMA

Ex parte Sawyer

873 So. 2d 166 (Ala. 2003) · No. 1020460 · Decided May 16, 2003

SUMMARY

The Supreme Court of Alabama considers a petition for a writ of mandamus challenging a Montgomery Circuit Court order that purported to return an action to Montgomery County after the case had been transferred to and docketed in Baldwin County. The court holds that the transferor court lacked authority to vacate or reverse the transfer after docketing by the transferee court, grants the petition, and issues the writ.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Houston, J.; See, J.; Lyons, J.; Brown, J.; Johnstone, J.; Harwood, J.; Stuart, J.; Moore, C.J.
JURISDICTION	Alabama
DECIDED	May 16, 2003
DOCKET	1020460
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Defendants petitioned the Supreme Court of Alabama for a writ of mandamus directing the Montgomery Circuit Court to vacate an order purporting to return the action to Montgomery County after the case had been transferred to and docketed in Baldwin County.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Alabama
PARTIES	Kathy Sawyer, Phillip Boyd v. Candace Lambert, as administratrix of the estate of Marguerite Hicks, deceased, State of Alabama Department of Mental Health and Mental Retardation et al.

TOPICS

- venue
- writ of certiorari
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether a transferor court retains authority to vacate or modify its transfer order after the case has been sent to and docketed by the transferee court.
2. Whether the aggrieved party's remedy for an allegedly improper transfer is a petition for a writ of mandamus directed to the transferor court.

HOLDINGS

1. Once a transferor court has granted a transfer and the case has been sent to and docketed by the transferee court, the transferor court lacks authority to vacate or set aside the transfer order or order the case returned.
2. The aggrieved party's sole remedy is a petition for a writ of mandamus directed to the transferor court; the transferee court may not consider a motion to retransfer the case to the county in which it was originally filed.

KEY QUOTATIONS

“Once the transferor court has granted the motion to transfer the case and the file has been sent to, and docketed by, the transferee court, the transferor court cannot then change its mind and vacate or set aside its transfer order or order the case returned.” (873 So. 2d at 167)

“The aggrieved party's sole remedy in such a case is a petition for writ of mandamus directed to the transferor court.” (873 So. 2d at 167)

FACTUAL BACKGROUND

Sawyer and Boyd sought transfer of a civil action from Montgomery County. The Montgomery Circuit Court ordered the case transferred to Baldwin County, and the Baldwin Circuit Court docketed the case and assigned a judge who entered orders. The Montgomery court later granted Lambert's motion to reconsider and purported to return the action to Montgomery County.

PROCEDURAL HISTORY

Sawyer and Boyd moved to transfer the action, and the Montgomery Circuit Court ordered transfer to Baldwin Circuit Court on August 26, 2002. After the case was docketed in Baldwin Circuit Court, Lambert moved the Montgomery court to reconsider and return the case to Montgomery or, alternatively, transfer it to Mobile. The Montgomery court granted reconsideration and ordered the action transferred to Montgomery County. The Supreme Court of Alabama granted the petition and issued the writ.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Montgomery Circuit Court's December 4, 2002, order purporting to return the case to Montgomery Circuit Court must be vacated.

CASES CITED

- Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001)
- Ex parte Morrow, 259 Ala. 250, 66 So. 2d 130 (1953)
- Ex parte Tidwell Indus., Inc., 480 So. 2d 1201 (Ala. 1985)

OPINION

Ex Parte Sawyer

873 So. 2d 166

PER CURIAM.

873 So.2d 166 (2003) Ex parte Kathy SAWYER and Phillip Boyd. (In re Candace Lambert, as administratrix of the estate of Marguerite Hicks, Deceased v. State of Alabama Department of Mental Health and Mental Retardation et al.) 1020460. Supreme Court of Alabama. May 16, 2003. Rehearing Denied August 29, 2003. John D. Clements, Ricky J. McKinney, and Robert E. Battle of Burr & Forman, LLP, Birmingham; and Courtney Tarver, Alabama Department of Mental Health & Mental Retardation, for petitioners. Kenneth J. Mendelsohn, Thomas E. James, and Ellenann C. Benefield of Jemison, Mendelsohn & James, P.C., Montgomery, for respondents. WOODALL, Justice. Kathy Sawyer and Phillip Boyd, defendants in a civil action filed by Candace Lambert, as administratrix of the estate of Marguerite Hicks, deceased, petition this Court for a writ of mandamus directing the Montgomery Circuit Court ("the trial court") to vacate the order it entered on December 4, 2002, purporting to return the action to the Montgomery Circuit Court after it had transferred it to the Baldwin Circuit Court. We grant the petition and issue the writ.

*167 In two motions, Sawyer and Boyd sought an order transferring this action to the Mobile Circuit Court. On August 26, 2002, the trial court ordered, in pertinent part, that this action be transferred to the Baldwin Circuit Court. On September 3, 2002, Lambert filed a "motion to reconsider," asking the trial court to "reconsider its previous ruling, vacate it and enter a new order denying Defendants' Motion to Transfer Venue." Alternatively, Lambert requested that "[i]f the court does not overturn its previous decision, ... the court [should] transfer the case to Mobile County, as the Defendants requested, instead of Baldwin County."

The case was docketed in the Baldwin Circuit Court on September 6, 2002. On September 26, 2002, Sawyer and Boyd filed a written response to Lambert's motion to reconsider, arguing, in part, that the trial court, "having already transferred this case to the Circuit Court of Baldwin County, ... now lacks jurisdiction to entertain [Lambert's] motion to reconsider." After a hearing on December 4, 2002, the trial court, on that same date, entered an order granting Lambert's motion to reconsider and ordering that the action "is transferred to Montgomery County." Sawyer and Boyd argue that the trial court had no authority to enter its December 4, 2002, order, returning the case

to the Montgomery Circuit Court. We agree. This Court summarized the relevant legal principles in *Ex parte MedPartners, Inc.*, 820 So.2d 815, 821 (Ala. 2001): "Once the transferor court has granted the motion to transfer the case and the file has been sent to, and docketed by, the transferee court, the transferor court cannot then change its mind and vacate or set aside its transfer order or order the case returned. *Ex parte Morrow*, 259 Ala. 250, 66 So.2d 130 (1953). Furthermore, the trial judge of the transferee court may not consider a motion to retransfer the case to the county in which it was originally filed. *Ex parte Tidwell Indus., Inc.*, 480 So.2d 1201 (Ala.1985). The aggrieved party's sole remedy in such a case is a petition for writ of mandamus directed to the transferor court. "Where the trial court has improperly ordered a transfer, mandamus against the transferor court is an appropriate remedy, notwithstanding the fact that an order has been entered which moves the case to the transferee court. The transferee court lacks authority to consider a motion to retransfer an action to the county in which it was initially filed. Mandamus to the transferor court is the appropriate avenue for seeking redress of any error in the transfer.'"2 *Champ Lyons, Jr.*, Alabama Rules of Civil Procedure Annotated § 82.4, p. 553 (3d ed.1996) (citations omitted)." As previously noted, the Baldwin Circuit Court, the transferee court, docketed this case on September 6, 2002. Thereafter, the Baldwin County circuit judge assigned to the case entered orders in the case. Therefore, Lambert's "sole remedy [was] a petition for writ of mandamus directed to the transferor court." The trial court's December 4, 2002, order purporting to order the case returned to the Montgomery Circuit Court was a nullity and must be vacated. PETITION GRANTED; WRIT ISSUED. HOUSTON, SEE, LYONS, BROWN, JOHNSTONE, HARWOOD, and STUART, JJ., concur. MOORE, C.J., concurs in the result.