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# **SUPREME COURT OF ALABAMA**

**SPECIAL TERM, 2019**

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**Thomas T. Ziemman, Jr.**

**v.**

**Ziemman Speegle, LLC**

**Appeal from Mobile Circuit Court  
(CV-14-229)**

SELLERS, Justice.

Jerome E. Speegle and Anthony M. Hoffman, two members of Ziemman Speegle, LLC, a law firm based in Mobile ("the law firm"), filed a petition in the Mobile Circuit Court ("the trial court") requesting that the trial court approve the

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dissolution of the law firm. See § 10A-5A-7.01(d), Ala. Code 1975 (allowing a member of a limited-liability company to apply to a circuit court for an order dissolving the limited-liability company). Thomas T. Zieman, Jr., previously a member of the law firm, appeared in the action, asserting a counterclaim against the law firm and a third-party complaint against Speegle and Hoffman. Without holding a hearing, the trial court entered a summary judgment on Zieman's counterclaim and third-party complaint in favor of the law firm, Speegle, and Hoffman. The trial court also identified the equity-holding members of the law firm and provided for the distribution of the assets of the law firm. Because we hold that the trial court should have held a hearing, we reverse the trial court's judgment and remand the case for further proceedings.

#### Facts and Procedural History

The law firm was established in 1994. On October 23, 2014, Speegle and Hoffman, following Zieman's withdrawal from the firm on October 17, 2014, filed their petition for approval of dissolution of the law firm. It is undisputed that Zieman, Speegle, and Hoffman were equity-holding members

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of the law firm at all relevant times. There is a factual dispute, however, regarding whether an additional attorney, Steele Holman, was an equity-holding member. Speegle and Hoffman claim that he was, while Zieman claims that he was not.<sup>1</sup>

After Speegle and Hoffman filed their petition, the trial court entered an order stating that the law firm was deemed dissolved as of October 18, 2014. The trial court also authorized Speegle and Hoffman to wind up the business affairs of the law firm, and it set a deadline for former and current members of the law firm to object to the dissolution or to its authorization of Speegle and Hoffman to wind up affairs.

In September 2015, Speegle and Hoffman filed a status report indicating that the process of winding up the law firm was ongoing. Shortly thereafter, Zieman filed a motion requesting an accounting to identify the law firm's debts, liquid assets, and accounts receivable. He also requested information regarding contingency-fee and hourly rate matters that were pending when the dissolution petition was filed and

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<sup>1</sup>An additional attorney, Robert Jackson, was also an equity-holding member of the law firm before the dissolution proceedings began. However, he resigned from the law firm and was compensated for his membership interest.

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information supporting Speegle and Hoffman's position that Holman was an equity-holding member of the law firm. Later, Zieman submitted discovery requests to the law firm seeking information regarding former clients of the law firm who, after the date of dissolution, had become clients of a new firm that had been formed by Speegle and Hoffman. Eventually, Zieman filed a motion requesting that the trial court compel the law firm to respond to his discovery requests.

In July 2016, Speegle and Hoffman filed a motion for approval of a proposed disbursement of law-firm assets to the former members of the law firm. In that motion, Speegle and Hoffman represented that they had "provided to all parties the accounting for the liquidation for [the law firm] ... from the date of dissolution to the date of [the] motion, which includes initial cash in bank, disbursements to pay debts and expenses, and statement of cash on hand and uncollected receivables."

Thereafter, Zieman filed a motion to appoint a neutral third party to take over the responsibility of winding up the affairs of the law firm. He asserted that Speegle and Hoffman had not fully responded to his requests for discovery

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regarding the law firm's assets and client matters pending on the date of dissolution.

Zieman also submitted a filing styled as an answer, a counterclaim, and a third-party complaint, in which he averred that the law firm was not ripe for dissolution because, he claimed, the law firm had not provided Zieman with a sufficient accounting. According to Zieman, the law firm, Speegle, and Hoffman had failed to produce information and records "relating to the open client matters and ongoing business of the [law firm] at the time of dissolution in order to evaluate the [law firm's] assets and Zieman's value of those assets." Based on that allegation and others, Zieman asserted a counterclaim against the law firm alleging "minority shareholder suppression" and stating:

"[The law firm] owes Zieman a duty to act fairly with respect to his minority interest and not to act to the detriment of that minority interest.

"[The law firm] has engaged in a course of action to oppress and squeeze out Zieman as a minority shareholder by failing to provide Zieman with documents necessary to properly evaluate his interest in [the law firm]; by failing to provide Zieman with financial statements and other information he has a right to receive; by engaging in acts designed to freeze Zieman out of [the law firm] rather than give him his fair share of his investment; and denying Zieman any return on his

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equity while refusing to buy-out Zieman's shares for fair value.

"Zieman has repeatedly requested documents necessary to evaluate his interest in the [law firm], and the [law firm] continues to act with a reckless, intentional or deliberate disregard to withhold such information from Zieman"

Against Speegle and Hoffman individually, Zieman asserted a third-party complaint alleging breach of fiduciary duty, unjust enrichment, and conversion.

The law firm, Speegle, and Hoffman filed a motion pursuant to Rule 12(b)(6), Ala. R. Civ. P., to dismiss Zieman's counterclaim and third-party complaint. In response, the trial court entered a briefing schedule suggesting that the court would rule on the motion to dismiss without holding a hearing.

Thereafter, the parties submitted evidentiary materials in support of their various filings, including the motion to dismiss and Zieman's response. The evidence included documents, affidavits, and correspondence. In addition, pursuant to Rule 56(f), Ala. R. Civ. P., Zieman requested more time to conduct discovery before the trial court ruled on the motion to dismiss. His filing suggested that if the trial court considered evidence filed by the parties--evidence

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outside the pleadings--that consideration would convert the motion to dismiss into one for a summary judgment and would trigger the procedural protections afforded by Rule 56, Ala. R. Civ. P. On March 16, 2017, Zieman submitted a filing in which he averred that, because no hearing had been held on the motion to dismiss, that motion should be denied.

The trial court did not hold a hearing and, on April 20, 2017, entered a judgment that, among other things, approved Speegle and Hoffman's request to disburse law-firm assets, identified the equity-holding members of the law firm, and declared how the assets were to be divided among the members. The trial court also struck an affidavit Zieman had submitted in opposition to the motion to dismiss, denied Zieman's motion to compel, denied Zieman's request for additional time to conduct discovery, denied Zieman's motion to appoint a neutral third party to wind up the law firm's affairs, and granted Speegle, Hoffman, and the law firm's motion to dismiss. In entering its order, the trial court noted that the parties had submitted materials outside the pleadings and that the trial court was making its ruling "[u]pon due consideration of the evidence." The trial court also stated that it was retaining

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jurisdiction over the dissolution proceedings in order to supervise the future collection and disbursement of law-firm assets.

Zieman appealed to this Court. The law firm, however, moved to dismiss the appeal for lack of jurisdiction, arguing that the April 20, 2017, judgment was not final for purposes of appeal. This Court agreed and dismissed Zieman's appeal. Zieman v. Zieman Speegle, LLC (No. 1160655). Thereafter, the trial court amended its order to make it a final appealable judgment; Zieman again appealed. In his notice of appeal, Zieman identified only the law firm as an appellee, thus indicating that he did not appeal from the portion of the judgment disposing of his third-party complaint.<sup>2</sup>

#### Discussion

The trial court specifically stated that it had considered evidence in entering the April 20, 2017, judgment. The parties appear to agree that the judgment should therefore be treated as a summary judgment, at least insofar as it ruled

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<sup>2</sup>In its brief to this Court, the law firm points to the failure of the notice of appeal to identify Speegle and Hoffman as appellees and argues that Zieman therefore did not perfect an appeal with respect to the judgment on his third-party complaint. Zieman does not address that circumstance in his reply brief.



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against Zieman on his counterclaim. See Rule 12(b), Ala. R. Civ. P. ("If, on a motion [to dismiss pursuant to Rule 12(b)(6), Ala. R. Civ. P.], matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.").

Zieman asserts in his brief to this Court that, "[i]f the trial court treated [the law firm's] motion [to dismiss] as one for summary judgment pursuant to Rule 56, [Ala. R. Civ. P.,] ... then the trial court erred by ... denying Zieman Rule 56's procedural safeguards." One of those procedural safeguards is a hearing:

"The motion for summary judgment, with all supporting materials, including any briefs, shall be served at least ten (10) days before the time fixed for the hearing, except that a court may conduct a hearing on less than ten (10) days' notice with the consent of the parties concerned. Subject to subparagraph (f) of this rule, any statement or affidavit in opposition shall be served at least two (2) days prior to the hearing."

Rule 56(c)(2), Ala. R. Civ. P. (emphasis added). In Van Knight v. Smoker, 778 So. 2d 801, 805 (Ala. 2000), this Court

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noted that "Rule 56(c), Ala. R. Civ. P., itself entitles the parties to a hearing on a motion for summary judgment." In addition, Zieman points to Rule 78, Ala. R. Civ. P., which indicates that, although a circuit court can rule on some motions without holding a hearing, a hearing is required with respect to motions "seeking final judgment." The Committee Comments to Rule 78 elaborate that "the rule prohibits the granting of a Motion Seeking Final Judgment such as a Motion for Summary Judgment without giving the parties an opportunity to be heard orally." (Emphasis added.) Finally, Zieman relies on Singleton v. Alabama Department of Corrections, 819 So. 2d 596, 599-600 (Ala. 2001), for the proposition that, when a Rule 12(b)(6) motion is converted to a motion for a summary judgment, the notice and hearing requirements typically applicable to summary-judgment proceedings apply.

In response, the law firm argues that Zieman did not ask the trial court to hold a hearing and that this Court should not reverse the trial court's judgment based on its failure to do something it was not asked to do. It is true that Zieman did not immediately object when the trial court, without setting a hearing date, entered a briefing schedule on pending

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motions. However, on March 16, 2017, more than a month before the trial court entered its judgment, Zieman submitted a filing in which he asserted that the trial court's consideration of matters outside the pleadings would convert that motion to dismiss to a motion for a summary judgment and would entitle Zieman to a hearing. He also specifically pointed out that no hearing had been set and asserted that the motion should therefore be denied. In addition, he expressly requested oral argument on the first page of the March 16, 2017, filing. Thus, we conclude that Zieman sufficiently notified the trial court that he was seeking a hearing on the law firm's motion.

The law firm also argues that, because this Court dismissed Zieman's first appeal based on a conclusion that the April 20, 2017, judgment was not final for purposes of appeal, Zieman was not entitled to a hearing. The law firm relies on language in Rule 78 providing that circuit courts may "make provision by rule or order for the submission and determination of motions not seeking final judgment without oral hearing." (Emphasis added.) The law firm also relies on the Committee Comments to Rule 78, which, as noted, provide

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that the rule "prohibits the granting of a Motion Seeking Final Judgment ... without giving the parties an opportunity to be heard orally." (Emphasis added.) Thus, the law firm argues, the hearing requirement in Rule 78 applies only to motions seeking a final judgment, and, because this Court determined that the April 20, 2017, judgment was not final for purposes of appeal, no hearing was required before that judgment could be entered. As noted, however, Rule 56(c) itself provides for a hearing on summary-judgment motions. Van Knight v. Smoker, 778 So. 2d at 805. And we are not convinced that the reference to a final judgment in Rule 78 limits the hearing requirement set out in Rule 56.<sup>3</sup>

The law firm next points out that, after this Court dismissed Zieman's first appeal, Zieman requested that the trial court enter a final appealable judgment without again demanding a hearing. Thus, the law firm asserts, Zieman induced the trial court's error. The law firm calls Zieman's actions in doing so "deceitful." This characterization is inaccurate. As noted, more than a month before the trial

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<sup>3</sup>It is not necessary to decide whether the reference to "final judgment" in Rule 78 means, as the law firm suggests, final for purposes of appeal.

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court entered its April 20, 2017, judgment, Zieman submitted a filing indicating he was entitled to a hearing, and, in that filing, he requested oral argument. Once Zieman's initial appeal was dismissed, he simply requested that the trial court finalize its order and enter an order that could be appealed. The law firm has not directed this Court's attention to any statements made by Zieman indicating that he represented to the trial court that he no longer believed he was entitled to a hearing. There is nothing indicating that Zieman sought to deceive the trial court.

Zieman has demonstrated that he is entitled to a hearing on the law firm's motion to dismiss, which was converted to a motion for a summary judgment. We reverse its judgment on that ground alone. We pretermit discussion of the other issues raised by the parties, and we express no opinion on the other matters ruled on by the trial court.<sup>4</sup>

REVERSED AND REMANDED.

Parker, C.J., and Bolin, Wise, and Mitchell, JJ., concur.  
Stewart, J., recuses herself.

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<sup>4</sup>The law firm has not cited any of this Court's precedent acknowledging that the failure to hold a hearing on a summary-judgment motion can constitute harmless error. See, e.g., Hicks v. Alabama Pest Servs., Inc., 548 So. 2d 148, 150 (Ala. 1989). Like the Court in Hicks, we believe that, "[g]iven the totality of the circumstances of this case, ... the prudent course would be to permit ... a hearing on the motion[] for summary judgment."