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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2007-2008

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1050893

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Colie E. Crutcher, Jr., M.D.

v.

Iola Williams

Appeal from Sumter Circuit Court  
(CV-00-68)

On Return to Remand

COBB, Chief Justice.

On March 14, 2008, we remanded this case with instructions for the trial court to make its judgment final pursuant to Rule 54(b), Ala. R. Civ. P., or to adjudicate a

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cross-claim that remained pending against Colie E. Crutcher, Jr., M.D. Crutcher v. Williams, [Ms. 1050893, March 14, 2008] \_\_ So. 2d \_\_ (Ala. 2008) ("Crutcher I"). In response, the trial court entered an order; however, that order contravened our opinion and instructions. We again remand the case for the trial court to enter another order in accordance with the opinion and instructions in Crutcher I.

#### Facts

We described the procedural history of this case in Crutcher I. In pertinent part, those facts are as follows:

"On June 23, 2000, Iola Williams filed a medical-malpractice action against Colie E. Crutcher, Jr., M.D., and the City of York Healthcare Authority d/b/a Hill Hospital ('Hill Hospital'). Williams's action arose out of her visit to the Hill Hospital emergency room in June 1998, during which she was treated by Dr. Crutcher. Williams alleged against Dr. Crutcher claims of medical negligence and the tort of outrage and against Hill Hospital claims of medical negligence, the tort of outrage, negligence, and negligent hiring and supervision of Dr. Crutcher and other Hill Hospital staff.

"On July 26, 2004, Hill Hospital filed the following cross-claim, seeking indemnity from Dr. Crutcher in the event it was found liable:

"'In the event Hill Hospital is found liable predicated upon the acts and/or omissions of [Dr.] Crutcher, while allegedly acting as its agent, Hill Hospital is entitled to common law

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indemnity for [Dr.] Crutcher's acts and/or omissions.'"

This court summarized the posttrial proceedings as follows:

"On October 24, 2005, [following a jury trial,] the trial court entered an order stating that 'judgment is rendered' in favor of Williams on her claims against Dr. Crutcher and Hill Hospital in the amount of \$145,000. The trial court's order did not address Hill Hospital's indemnity cross-claim against Dr. Crutcher. Neither did it direct the entry of a final judgment as to Williams's claims against Dr. Crutcher and Hill Hospital in accordance with the provision in Rule 54(b), Ala. R. Civ. P., for certifying as final a judgment disposing of fewer than all claims in an action.

"The trial court denied the postjudgment motions filed by Dr. Crutcher and Hill Hospital. On March 7, 2006, Dr. Crutcher filed a notice of appeal to this Court."

\_\_\_ So. 2d at \_\_\_.

This Court in Crutcher I found that the judgment from which Dr. Crutcher appealed was not a final judgment because it did not dispose of the cross-claim filed by the City of York Healthcare Authority d/b/a/ Hill Hospital ("Hill Hospital") against Dr. Crutcher and because the cross-claim had not been otherwise adjudicated. Accordingly, we remanded this case to the trial court with instructions to make its October 24, 2005, judgment final pursuant to Rule 54(b), Ala.

R. Civ. P., or to adjudicate Hill Hospital's cross-claim against Dr. Crutcher.

In Crutcher I, we specifically addressed and rejected Iola Williams's argument that, on remand, the trial court could "amend" its October 24, 2005, order pursuant to Rule 60(a), Ala. R. Civ. P., to "correct" the judgment so as to adjudicate Hill Hospital's cross-claim and thus make the October 24, 2005, judgment final. We stated:

"As an alternative to her argument that the trial court's judgment is final, Williams asks this Court to remand the case for the trial court to amend or correct the judgment under Rule 60(a), Ala. R. Civ. P., to include a dismissal of the cross-claim. ... Williams cites no authority for her proposition that Rule 60(a) is the appropriate vehicle for resolving the jurisdictional defect in the appeal.

"Moreover, Rule 60(a) 'deals solely with the correction of clerical errors,' not with 'errors of a more substantial nature.' Rule 60, Ala. R. Civ. P., Committee Comments on 1973 Adoption. 'Clerical errors' are errors '"to which the judicial sanction and discretion cannot be said reasonably to have been applied.'" Lester v. Commisky, 459 So. 2d 868, 870 (Ala. 1984) (quoting Ex parte ALK Radio Supply Co. of Georgia, 283 Ala. 630, 635, 219 So. 2d 880, 885 (1969)). In this case, determining how to adjudicate the cross-claim in light of the law, the jury's answers to interrogatories, and any stipulation by the parties requires judicial discretion. The record contains no indication that the trial court exercised that discretion. A Rule 60(a) motion 'cannot be used to make [the judgment]

say something other than what was originally pronounced.' Ala. R. Civ. P. 60, Committee Comments on 1973 Adoption. Therefore, in this case, Rule 60(a) does not permit a remand with instructions to 'correct' the judgment under Rule 60(a) by dismissing the cross-claim."

Crutcher I, \_\_ So. 2d at \_\_.

On March 26, 2008, the trial court entered the following order, styled as an "Amended Judgment":

"Pursuant to the Jury Verdict of October 11, 2005, judgment is rendered in favor of the Plaintiff Iola Williams and against the Defendants Colie E. Crutcher, Jr., M.D., and City of York Healthcare Authority/Hill Hospital in the amount of One Hundred Forty-Five Thousand Dollars (\$145,000) for compensatory damages;

"Further, for purposes of clarification in accordance with Rule 60(a) Ala. R. Civ. P. to correct the Court's oversight: Judgment is rendered, nunc pro tunc, in favor of the Cross-Defendant Colie E. Crutcher, Jr., M.D., on the City of York Healthcare Authority/Hill Hospital's Cross-Claim pursuant to the Jury Verdict of October 11, 2005, in which Jury Questions #1 and #2 were incorporated. This Court was of the opinion that the Jury's Verdict and its answers to post-verdict Questions #1 and #2 disposed of Defendant Hill Hospital's cross-claim against Defendant Crutcher as a matter of law and thus left nothing further to be adjudicated and no other verdict on which to render judgment.

"Accordingly this Court previously entered Judgment on the Jury Verdict on October 24, 2005, intending the Judgment to be final as to all parties and so as to dispose of all claims in this matter.

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"This Amended Judgment reflects the Court's original intention and corresponds with the Jury Verdict of October 11, 2005, into which Jury Questions #1 and #2 were merged. ..."

(Emphasis added; footnote omitted.)

#### Analysis

"It is well established that on remand the issues decided by an appellate court become the "law of the case," and that the trial court must comply with the appellate court's mandate.'" Sonnier v. Talley, 806 So. 2d 381, 388-89 (Ala. 2001) (quoting Gray v. Reynolds, 553 So. 2d 79, 81 (Ala. 1989)).

In Crutcher I, after directly and expressly considering the parties' arguments on the issue, we explained that Rule 60(a), Ala. R. Civ. P., did not provide authority for the trial court, on remand, to "amend" its October 24, 2005, judgment to adjudicate Hill Hospital's cross-claim against Dr. Crutcher. Nevertheless, the trial court entered an order on remand purporting to do exactly that. We now remand the case for the trial court to vacate its March 26, 2008 order and to enter an order in accordance with Crutcher I and the instructions in Crutcher I that it either (1) make the October 24, 2005, order a final judgment pursuant to Rule 54(b), Ala.

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R. Civ. P.; or (2) adjudicate Hill Hospital's cross-claim. Failure to respond within 28 days will result in the dismissal of the appeal as being from a nonfinal judgment.

REMANDED WITH INSTRUCTIONS.

See, Woodall, Smith, and Parker, JJ., concur.