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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2026-2027

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CL-2026-0035

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Cynthia Bachus

v.

Jessica Myers Kenington

Appeal from Montgomery Circuit Court  
(CV-14-900353)

FRIDY, Judge.

Cynthia Bachus appeals from a judgment of the Montgomery Circuit Court ("the trial court") quashing a writ of garnishment against the income of Jessica Myers Kenington ("Myers"). For the reasons set forth herein, we reverse the judgment and remand the cause.

### Background

In 2014, Bachus commenced an action in the trial court against John Laken Kenington ("Kenington") and Myers (collectively referred to as "the defendants"), in which she asserted that they had breached a residential lease agreement that she and the defendants had entered into and that the defendants had damaged the leased property.

In December 2015, Bachus submitted an affidavit stating that the total amount she sought was \$19,150.60, plus court costs. The same month, the trial court entered a consent judgment against Kenington in the amount of \$19,150.60, plus court costs. The trial court noted that Kenington's counsel had advised the trial court that he had no authority to speak for Myers because her whereabouts were unknown. Accordingly, the trial court entered a default judgment against Myers in the amount of \$19,150.60, plus court costs. The consent judgment against Kenington and the default judgment against Myers were entered in the same document ("the 2015 judgment"). Although the 2015 judgment did not specify whether the judgments against Kenington and Myers were joint and several, Bachus's counsel later represented that the judgments were

joint and several, and Myers does not challenge that representation on appeal.

The record does not indicate any collection activity until December 18, 2024, when Bachus initiated garnishment proceedings against Myers by filing an application for a process of garnishment naming Transworld Systems, Inc. ("Transworld"), as garnishee. The application stated that the amount owed under the default judgment consisted of \$19,150.60 in unpaid principal, \$10,363.36 in accrued postjudgment interest, and \$449.68 in court costs, for a total of \$29,963.64. The trial court issued the writ of garnishment the same day, directing Transworld to retain the amount authorized by law from Myers's wages, salary, or other compensation until \$29,963.64 had been accumulated.

On January 14, 2025, Myers, acting pro se, moved to set aside the 2015 judgment and the writ of garnishment. Myers asserted that she and Kenington had been roommates, that she had paid her share of the rent to Bachus, and that Kenington had failed to pay his share. She further asserted that she did not marry Kenington until February 2013, that she had divorced Kenington before the trial court entered the 2015 judgment, and that their divorce judgment had provided that neither party would

assume the other's debts. Myers also stated that Kenington had caused the property damage that Bachus had alleged in her complaint. Additionally, Myers stated that she had not been served with the complaint or otherwise notified of Bachus's action until her wages were garnished, which was more than nine years after the 2015 judgment had been entered. The same day, the trial court stayed the writ of garnishment and set the matter for a hearing. Bachus filed a response to Myers's motion.

On March 6, 2025, Bachus initiated garnishment proceedings against Kenington. The application reflected an unpaid balance due under the 2015 consent judgment of \$19,150.60, accrued postjudgment interest of \$10,608.91, and court costs of \$480.93, for a total amount due of \$30,240.44. The trial court issued the requested writ of garnishment, but the garnishee's response indicated that "no funds [were] available" as to Kenington.

On April 1, 2025, Bachus and Myers executed a written consent agreement ("the 2025 consent agreement") in the garnishment proceedings. The handwritten provisions reduced the wage garnishment to \$150 per pay period, stayed postjudgment interest as to Myers, and

provided that Bachus would dismiss the writ of garnishment against Myers "if they are able to find and collect the entire amount owed from [Kenington]." The 2025 consent agreement further provided that "[t]he entire amount due is \$29,963.64 as to [Myers]," that it constituted a settlement of all claims presented in the action, that the parties relinquished their right to a trial on those claims, and that, upon a timely request for enforcement, the trial court would enter a final judgment in accordance with its terms against any noncomplying party. The trial court approved the 2025 consent agreement the same day.

On April 25, 2025, upon Bachus's motion, the trial court entered a conditional judgment against Transworld after determining that the writ of garnishment had been served on December 19, 2024, and that Transworld had failed to file a timely answer.

On September 30, 2025, Myers, acting pro se, moved to dismiss or quash the April 2025 wage garnishment directed to Transworld. Myers asserted that her wages were exempt from garnishment because, she said, her net take-home pay consistently fell below \$1,000 per pay period. She also stated that she had serious medical conditions that prevented her from working full-time on a continuous basis. She further asserted

that she was on intermittent leave under a provision of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2612. She also stated that, beginning in October 2025, she would start contributing to a 401(k) account, which would further reduce her disposal income. She alleged that the garnishment had caused significant financial hardship and had impaired her ability to meet her necessary living expenses. Finally, she asserted that her wages were exempt from garnishment under Art. X, § 204, Ala. Const. 2022, which exempts personal property to the value of \$1,000 from sale or execution, or other process of any court, issued for the collection of debt. In support of her motion, Myers attached FMLA leave and medical-certification forms, along with payroll records consisting of several earnings statements from Transworld. The trial court set Myers's motion for a hearing on November 18, 2025. It later stayed the garnishment of Myers's wages pending that hearing.

On October 3, 2025, Bachus filed a response to Myers's motion to dismiss or quash the writ of garnishment. In that response, Bachus argued that Myers's motion did not state that she always made less than \$1,000 per pay period. Bachus also argued that Myers's voluntary contribution to a 401(k) account did not reduce Myers's disposable

income. Bachus argued that the wage garnishment should remain in place with instructions to Transworld to withhold 25 % of Myers's income for any pay period in which her disposable income exceeds \$1,000.

On November 18, 2025, the trial court conducted a hearing on Myers's motion to quash the writ of garnishment. Bachus and Myers appeared through counsel; Kenington did not appear. Bachus's counsel informed the trial court that Bachus had negotiated a pro tanto settlement agreement with Kenington. When the trial court asked if the pro tanto settlement left Myers responsible for the judgment, Bachus's counsel responded that, because Kenington had paid approximately two-thirds of the balance due from the 2015 judgment, Myers was responsible for approximately one-third of the balance.

The trial court then asked if Bachus had negotiated with Kenington such that a portion of the 2015 judgment would fall on Myers even though Bachus had negotiated with Myers first. Bachus's counsel responded that Bachus did not have contact with Kenington at the time she entered into the 2025 consent agreement with Myers. The trial court then noted that Bachus had agreed with Myers that, if Bachus found Kenington, she would not be responsible for the 2015 judgment. Bachus's counsel

responded that, under the 2025 consent agreement, Myers would not be responsible for the 2015 judgment only if Bachus could collect the entire amount of the 2015 judgment from Kenington. The trial court then stated: "Well, you cannot collect the entire amount if you offered to settle less than that with somebody else."

Bachus's counsel replied that Bachus had not made the settlement offer but had accepted it and further explained that it was common practice to settle with one jointly liable defendant while pursuing the remaining balance from another jointly liable defendant. The trial court responded that it appeared Bachus had instead "agreed to ... relieve [Myers] of her share." The trial court asked whether Bachus had forfeited the remaining balance by accepting less than the full amount of the 2015 consent judgment from Kenington after he was found, and Myers's counsel responded affirmatively. The trial court then orally granted Myers's motion to quash the writ of garnishment. Bachus's counsel immediately objected, stating: "[T]hat's not what the consent agreement says." The trial court acknowledged the objection before concluding the hearing without receiving any testimony regarding whether Myers's income was exempt from garnishment.

On November 19, 2025, one day after the hearing, Bachus filed a notice advising the trial court that she and Kenington had entered into a pro tanto settlement agreement. Bachus represented that she had executed the pro tanto settlement agreement on or about August 20, 2025, and had sent it to Kenington's attorney for execution. Although she had not received a signed copy, Bachus asserted that she had received payment in accordance with the pro tanto settlement agreement and that the pro tanto settlement agreement had been fully performed. Bachus asserted that, after crediting Kenington's payment, Myers's remaining liability was approximately \$8,776.84. Bachus submitted a copy of the alleged pro tanto settlement agreement, but that copy was signed only by Bachus's counsel, not by Kenington or his counsel.

Under the alleged pro tanto settlement agreement, Bachus agreed to fully release Kenington from all further liability on the 2015 judgment in exchange for Kenington's payment to Bachus of \$20,000. The alleged pro tanto settlement agreement included the following provision:

"[Bachus and Kenington] desire to settle this matter and agree to the following Settlement Agreement and Full and Complete Release of any and all claims alleged in the above-styled cause and as to the judgment balance as they relate to [Kenington] only. This release in no way affects or hinders

[Bachus's] ability to collect any remaining judgment balance from [Myers]."

In her notice of settlement, Bachus also pointed out several irregularities in the November 18, 2025, hearing. Bachus pointed out that her counsel had appeared in court prepared to argue against Myers's September 30, 2025, motion to dismiss or quash the writ of garnishment. Bachus stated that her counsel was not allowed to present an argument challenging that motion and was instead asked questions about matters not contemplated by the trial court's order setting the hearing. Bachus also noted that Myers's counsel had been allowed to make statements to the court but that the trial court had shut down Bachus's counsel's attempt to raise issues of law or argue against the matter set to be heard at the hearing.

On November 21, 2025, Bachus filed a satisfaction of judgment as to Kenington, stating that, upon receipt of \$20,000, she entered "full satisfaction of the December 2015 judgment as to [Kenington] only." The filing further stated that "[t]his Satisfaction of Judgment shall not affect the liability of [Myers], against whom the December 2015 judgment remains in full force and effect."

On November 24, 2025, Myers moved the trial court to enter a written order memorializing its oral ruling quashing the writ of garnishment. The next day, Bachus responded to Myers's request. In her response, Bachus argued that the pro tanto settlement agreement between Kenington and Bachus in no way affected Bachus's ability to collect the remainder of the 2015 judgment from Myers. Bachus raised further irregularities in the November 18, 2025, hearing, including the fact that it had not occurred in open court, and she argued that the trial court's hasty quashing of the writ of garnishment violated her right to due process.

On November 25, 2025, the trial court entered a judgment quashing the writ of garnishment. In its judgment, the trial court found "that [Bachus] negotiated a settlement with [Myers] and later negotiated another agreement with [Kenington]. Based on the facts before this [c]ourt, [Bachus] is not honoring the original agreement with [Myers]." On December 18, 2025, the trial court entered an order satisfying the 2015 judgment as to Myers.

On December 19, 2025, Bachus moved to alter, amend, or vacate the trial court's judgment quashing the writ of garnishment. The same

day, Bachus moved to vacate the trial court's order satisfying the 2015 judgment as to Myers. On December 31, 2025, the trial court denied both motions. Bachus appealed.

### Standard of Review

When the facts are not disputed and the trial court's judgment presents a pure question of law, we review the judgment de novo. Ex parte Barnett, 978 So. 2d 729, 731 (Ala. 2007).

### Analysis

In her brief, Bachus contends that the trial court violated her right to due process by quashing the writ of garnishment and satisfying the 2015 judgment regarding Myers based on Bachus's pro tanto settlement agreement with Kenington without affording Bachus notice and a reasonable opportunity to be heard regarding the effect of that settlement. We agree.

In her September 30, 2025, motion to quash or dismiss the garnishment of her wages, Myers argued only that her wages were exempt from garnishment based on the amount of her disposable income. In her October 3, 2025, response to Myers's motion, Bachus addressed

Myers's exemption arguments. Further, Myers's motion was the only matter before the trial court at the November 18, 2025, hearing.

At the November 18, 2025, hearing, the trial court did not receive any evidence or argument regarding whether Myers's wages were exempt from garnishment as Myers had argued in her motion to quash or dismiss writ of garnishment. Instead, the trial court questioned Bachus's counsel about Bachus's pro tanto settlement agreement with Kenington and the effect of that pro tanto settlement agreement on Myers's liability under the 2015 judgment. Further, in its November 25, 2025, judgment quashing the writ of garnishment, the trial court did not address whether Myers's income was exempt from garnishment. Rather, the trial court quashed the writ of garnishment because it found that Bachus had failed to honor the 2025 consent agreement with Myers. Based on that finding, it appears that the trial court concluded that Bachus was required by the 2025 consent agreement to release Myers from all liability on the 2015 judgment. However, because the 2025 consent agreement required Bachus to release Myers only if Bachus was able to collect the entire amount owed under the 2015 judgment from Kenington, and because that condition undisputedly did not occur, the trial court's finding that

Bachus was required to release Myers could not have been based on the terms of 2025 consent agreement alone.

Rather, the trial court's finding that Bachus had not honored the 2025 consent agreement appears to have been based on its statement at the November 18, 2025, hearing that Bachus had forfeited her right to collect the balance of the 2015 judgment from Myers by accepting less than the entire amount due from Kenington after she had agreed to release Myers entirely if Bachus was able to collect the entire amount from Kenington. It appears that the trial court's judgment satisfying the 2015 judgment as to Myers was based on the same reasoning.

Thus, it appears that the trial court quashed Bachus's garnishment of Myers's wages based on a theory of estoppel, which it raised ex mero motu. Rule 8(c), Ala. R. Civ. P., lists estoppel as an affirmative defense. Our supreme court has held that a trial court cannot assert an affirmative defense on behalf of a defendant and that it errs when it does so. See Cathedral of Faith Baptist Church, Inc. v. Moulton, 343 So. 3d 500, 507-08 (Ala. 2021); Ex parte Beck, 988 So. 2d 950, 955 (Ala. 2007); Waite v. Waite, 891 So. 2d 341, 343-44 (Ala. Civ. App. 2004).

Further, when a trial court quashes a writ of garnishment based on an affirmative defense, it enters a summary judgment on the affirmative defense. See Tucker v. Richard M. Scrushy Charitable Found., Inc., 93 So. 3d 83 (Ala. 2012) (applying the notice requirements of Rule 56(c)(2), Ala. R. Civ. P., to garnishment proceedings). However, before a summary judgment can be entered, the opposing party must have notice of the basis of the judgment and an opportunity to be heard. See Hales v. First Nat'l Bank of Mobile, 380 So. 2d 797 (Ala. 1980) (reversing a judgment because the trial court improperly converted a motion to dismiss into a motion for a summary judgment without notifying the parties of its intent to consider matters outside the pleadings).

Here, the trial court erred by raising the affirmative defense of estoppel ex mero motu and then entering a summary judgment in Myers's favor based on that affirmative defense. The record reflects that, at the November 18, 2025, hearing, Bachus's counsel was prepared to address only the issues raised in Myers's motion to quash the writ of garnishment, and the trial court did not give Bachus a reasonable opportunity to address its estoppel theory. Further, Bachus preserved the issue by arguing a lack of notice both in her postjudgment motion and on

appeal. Cf. Williams v. Dodd, [Ms. SC-2024-0704, Sept. 26, 2025] \_\_\_ So. 3d \_\_\_, \_\_\_ n.3 (Ala. 2025) (declining to reverse a summary judgment based on trial court's failure to provide notice of intent to treat a motion to dismiss as a motion for a summary judgment because appellants failed to raise lack of notice in their postjudgment motion or on appeal).

In her brief, Myers asserts that Bachus received due process because the trial court held a hearing on Myers's motion to quash the writ of garnishment. However, Myers does not acknowledge the fact that the trial court did not receive any evidence or argument regarding the issues raised in her motion to quash and instead raised an affirmative defense ex mero motu.

### Conclusion

Based on the foregoing, we reverse the trial court's judgment quashing the garnishment of Myers's wages and its order deeming the 2015 judgment satisfied as to Myers, and we remand the matter for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

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