Rel: November 20, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0424

Ex parte Suzanne M. Willmon

PETITION FOR WRIT OF MANDAMUS

(In re: Suzanne M. Willmon

v.

First State Bank of DeKalb County, Casey S. Handrich, and Louis Crowder)

(Marshall Circuit Court: CV-25-900059)

COOK, Justice.

This petition for a writ of mandamus raises the question of how to conduct discovery in a civil case when a witness invokes their Fifth Amendment right not to incriminate themselves.

The petitioner, Suzanne M. Willmon, claims that certain bank documents were forged, leading to a foreclosure on her property. The focus of this mandamus petition is discovery directed to the bank employee who allegedly forged those documents. In April 2022, Willmon executed a promissory note ("the 2022 note") in favor of First State Bank of DeKalb County ("the Bank"), secured by a second mortgage on property she owned in Grant ("the Grant property"). Afterward, in October 2023, she allegedly contacted the Bank's vice president to request a $60,000 advance on the 2022 note. According to the Bank, Willmon requested that Casey S. Handrich, a notary who was employed at the Bank, execute various loan documents related to her request, including a renewed promissory note for $211,883.10 and mortgage documents adding two properties located in Woodville as collateral. Once the documents were executed, Handrich was to notarize them. Willmon now disputes all of this and claims that those documents were forged by Handrich.

Later, Willmon defaulted on the note secured by the first mortgage

on the Grant property, which had been serviced by Selene Finance LP. The Bank then notified Willmon that her default also triggered a default under the 2022 note and the second mortgage. Thus, despite her claim that the documents were forged, the Bank notified Willmon that it intended to sell the Grant property in a foreclosure sale on February 13, 2025.

In response, Willmon filed this action against the Bank in the Marshall Circuit Court, requesting that the court declare the rights of the parties in regard to the 2022 note and order the foreclosure sale to be stopped. Willmon also moved for a temporary restraining order ("TRO") preventing the foreclosure sale, but the sale occurred before any TRO could be entered. The Bank then filed its answer to Willmon's complaint, denying her claims and asserting a counterclaim to recover the deficient funds that it alleged Willmon still owed it under the 2022 note following the foreclosure sale of the Grant property.

Willmon amended her complaint to, among other things, add additional claims against the Bank and to add Handrich as a defendant to her action, and Willmon alleged claims of forgery and notary misconduct against Handrich.

Willmon eventually took the deposition of Handrich. At that time, Handrich refused to answer any questions and invoked her Fifth Amendment right under the United States Constitution. Willmon filed a motion to compel, and the trial court initially ordered Handrich to sit for a deposition.

Handrich then moved the trial court vacate its order compelling her to testify. She also asked the trial court to stay the proceedings against her and to prohibit further deposition questions, interrogatories, and other matters in the case that implicated her Fifth Amendment right.

In response, Willmon moved for sanctions against Handrich for failing to comply with the trial court's previous order compelling her testimony. Willmon also opposed Handrich's motion to stay, arguing that Handrich had failed to demonstrate a concrete, nonspeculative basis for a stay and that a blanket stay would substantially prejudice her.

Following additional filings and proceedings, the trial court granted Handrich's motion to indefinitely stay the proceedings against her after it determined that Willmon's amended complaint included allegations that Handrich had engaged in criminal conduct, thus implicating Handrich's Fifth Amendment right.

Willmon has now petitioned this Court for a writ of mandamus directing the trial court to, among other things, (1) vacate its order granting Handrich's motion to indefinitely stay the proceedings against her based on her invocation of her Fifth Amendment right and (2) vacate its order denying her request to compel Handrich to provide responses to her discovery and to sit for a deposition in this case. For the reasons stated below, we grant the petition and issue the writ.

Facts and Procedural History

I. Willmon's Executed Promissory Note with the Bank in August 2022

As stated previously, Willmon owned property, the Grant property, which had a note secured by a mortgage that was serviced by Selene Finance LP. On April 30, 2022, Willmon executed the 2022 note in the amount of $208,390.60 in favor of the Bank. That loan was secured by a second mortgage on the Grant property. The note was due and payable in full on February 26, 2023.

When Willmon was unable to pay the 2022 note in full by the maturity date, she executed in March 2023, a "Modification, Extension, and Change In Terms Agreement" in the amount of $40,969 ("the March 2023 notice of additional advances"). That loan was secured by the second

mortgage on the Grant property, extended the loan's maturity date, and allegedly increased the interest rate from 7% to 9%. According to Willmon, she paid that loan back in full on August 15, 2023.

II. The October 2023 Documents

On October 1, 2023, Willmon contacted the Bank's vice president, Jacob Stubblefield, to request a $60,000 advance on the existing 2022 note in order to purchase a tractor for her land in Kentucky and to get her property in Kentucky surveyed. The Bank claims that it was unwilling to extend the additional $60,000 to be secured by the tractor, which would have been located in a different state, and, instead, offered to extend the additional $60,000 loan if it was secured by an additional advance notice under the second mortgage on the Grant property.

According to the Bank, in her text exchange with Stubblefield, Willmon agreed to the terms of the proposed loan and also agreed to execute an additional mortgage advance notice to be recorded in the Probate Office of Marshall County to secure the additional $60,000 loan. The Bank then arranged to have the loan documents prepared on October 23, 2023, so that they would be ready for Willmon to execute them in Grant on October 24, 2023.

The Bank contends that, on October 24, 2023, Willmon allegedly contacted Handrich, a notary who was employed by the Bank, and asked her to execute various loan documents related to her request, including a renewed promissory note for $211,883.10, a notice of additional advance for $60,000, and mortgage documents adding two properties located in Woodville as collateral ("the October 2023 loan documents").

Once the documents were executed, Handrich notarized them. The additional mortgage advance notice was thereafter recorded on October 27, 2023, with the Marshal County Probate Office.

Willmon, however, vigorously disputes this account of events and maintains that she never asked Handrich to execute the October 2023 loan documents. According to her, Handrich forged her signature on those documents without her knowledge, consent, or power of attorney and without discussion of the terms.

Despite Willmon's claims, however, the Bank notes that the $60,000 loan proceeds were deposited into Willmon's checking account on October 24, 2023. Willmon then executed and delivered two checks -- one in the amount of $45,327.81 for the tractor and a second in the amount of $15,000 for the survey of her property in Kentucky.

Willmon acknowledges that the $60,000 loan proceeds were deposited into her account and that she executed and delivered the two checks described above. However, she claims that she believed that those funds were an advance on the 2022 note that was secured by the second mortgage on the Grant property.

III. Willmon Defaults on the First Mortgage on the Grant Property and the Bank Begins Foreclosure Proceedings

In December 2024, Willmon advised the Bank that she had ceased making the payments on the note secured by the first mortgage on the Grant property and that that loan was in default. The Bank then received a payoff statement from Selene Finance LP that indicated that no payments had been made on the note secured by the first mortgage on the Grant property since March 2024 and that the outstanding amount due as of the date of the payoff statement was $123,927.02.

On January 29, 2025, the Bank, as a protective advance under the second mortgage, paid Selene Finance LP $126,121.38 to release the first mortgage on the Grant property. According to the Bank, Willmon's failure to maintain payment of the note secured by the first mortgage constituted a default under the second mortgage on the Grant property used to secure the 2022 note and under the October 2023 loan documents.

As a result, the Bank commenced foreclosure procedures on the Grant property.

Willmon claims that she was unaware of any of this until January 30, 2025, and maintained that the October 2023 loan documents were forged. Despite her claim that the documents were forged, the Bank notified Willmon that it intended to sell the Grant property securing the loans at a nonjudicial foreclosure sale on February 13, 2025.

On February 12, 2025, Willmon's counsel sent a dispute letter to the Bank's foreclosure counsel, asserting that the October 2023 loan documents were forged, disputing the debt, and demanding cancellation of the February 13, 2025, foreclosure sale. Over Willmon's objections, that foreclosure sale went ahead as scheduled. According to the Bank, the Grant property was sold to the highest bidder -- Louis Crowder -- for $175,000, which, Willmon alleges, is less than the $200,000 appraised value of the property.[1]

After applying the gross sale proceeds toward the expenses of the

[1]According to Willmon, Crowder was on notice of the dispute between her and the Bank through the existence of her underlying lawsuit against the Bank and, thus, she says, cannot claim to be a bona fide purchaser of the Grant property.

sale in the amount of $7,637.86, as provided under the second mortgage, there remained net foreclosure proceeds of $167,362.14, which were applied first to reimburse the Bank for the protective advance to pay off the defaulted first mortgage, plus interest, and second to the original unpaid balance of the 2022 note, leaving an unpaid deficiency balance owed by Willmon of $179,107.83. As explained below, this amount would later become the basis of the Bank's deficiency counterclaim against Willmon.

IV. Willmon's Underlying Action Against the Bank

On February 12, 2025, Willmon filed a declaratory-judgment action against the Bank in the Marshall Circuit Court, requesting that the court declare the rights of the parties in regard to the loans and order the nonjudicial foreclosure sale of the Grant residence to be stopped. Willmon attached three exhibits to her complaint, including (1) a copy of the notice of the foreclosure sale, (2) a copy of the March 13, 2023, notice of additional advances, and (3) a letter from her attorney to the Bank asking it to cancel the foreclosure sale.

The next day, on February 13, 2025, Willmon moved for a TRO preventing the foreclosure sale. She also moved for a preliminary

injunction restraining the filing of a foreclosure deed if the sale occurred before the entry of the TRO.

Although the trial court granted her request and entered the TRO on February 14, 2025, the foreclosure sale had already proceeded as planned on February 13, 2025. As a result, on February 19, 2025, the Bank moved to dissolve the TRO as moot. That same day, Willmon filed her consent to have the TRO dissolved and also moved to withdraw her request for a preliminary injunction.

On March 12, 2025, the Bank answered Willmon's complaint and filed a counterclaim seeking to recover a deficiency judgment against Willmon in the amount of the principal sum of $179,107.83, interest at 13.5% per annum, attorney's fees in the amount of $20,000, and costs.

The trial court issued a scheduling order on March 19, 2025, which set Willmon's last day to amend her pleadings as June 1, 2025, the Bank's last day to amend its pleading as July 1, 2025, and trial on October 14, 2025.

On April 21, 2025, Willmon answered the Bank's counterclaim and asserted numerous affirmative defenses. In her answer, Willmon vigorously denied the Bank's account of events and maintained that the

October 2023 loan documents were forged.

On June 11, 2025, Willmon amended her complaint, adding additional claims against the Bank, including claims of fraud, breach of fiduciary duty and good faith, wrongful foreclosure, and conversion, as well as two counts of breach of contract related to the Bank's inclusion of the Woodville properties in the October 2023 loan documents. She also named Crowder and Handrich as defendants. She alleged claims of fraud, fraud in the execution, and notary misconduct against Handrich and a declaratory-judgment claim against Crowder.

Willmon also filed an amended answer and served interrogatories, requests for production, and requests for admissions on Handrich.

On June 26, 2025, the Bank moved to strike the amended complaint as untimely filed. On July 3, 2025, the trial court granted the Bank's motion and struck Willmon's amended complaint and amended answer.

V. The Bank's Motion for a Summary Judgment

On July 17, 2025, the Bank moved for a summary judgment on its counterclaim against Willmon. In its motion, the Bank argued that Willmon had defaulted under the terms of the written agreements with it by failing to make payments on the note secured by the first mortgage

on the Grant property to Selene Finance LP, which, it said, was a breach of the Bank's second mortgage under the 2022 note. That breach, it said, led to the foreclosure of the Bank's second mortgage, thus resulting in the deficiency balance that it is claiming as damages against Willmon.

According to the Bank, its request for relief was separate from the $60,000 loan advance contemplated by the October 2023 loan documents that Willmon alleges were forged. Rather, it said, the focus of its request for relief was on the additional $60,000 that were deposited into her bank account because Willmon admittedly spent those funds in accordance with the purpose for which she originally sought them -- to purchase a tractor and to have land surveyed in Kentucky. The Bank argued that it was "immaterial" whether the October 2023 loan documents were signed on her behalf because she accepted the benefit of that loan by using the money for those purposes.

On July 31, 2025, Willmon opposed that motion, stating that her discovery requests to the Bank remained incomplete and requesting that the scheduled summary-judgment hearing be continued pursuant to Rule 56(f), Ala. R. Civ. P.

Willmon later filed her opposition to the Bank's summary-judgment

motion. In her opposition, Willmon first argued that the Bank had failed to meet its initial prima facie burden of establishing that no genuine issue of material fact existed as to whether the October 2023 loan documents were forged. According to Willmon, the Bank pointed to unreliable affidavits that, she said, were contradicted by Stubblefield in an "attempt to obscure its misconduct and unfairly burden [her] with fabricated debts." She then argued, among other things, that genuine issues of material fact existed concerning the authenticity of the October 2023 loan documents, as evidenced by the affidavits and exhibits she attached to her opposition. Willmon also filed a motion for leave to amend her complaint and answer in order to reinstate her previously struck amended complaint, which included claims against Handrich.

The trial court reset the summary-judgment hearing for October 3, 2025, allowing Willmon time to complete the discovery she alleged she needed to oppose the motion.

VI. Handrich's Invocation of Her Fifth Amendment Right and Willmon's Motion to Compel

On September 30, 2025, Willmon deposed Handrich. After Handrich confirmed her name, she invoked her right against self-incrimination under the Fifth Amendment to the United States

Constitution. She then did so in response to every subsequent question.

That same day, Willmon moved to compel Handrich to provide testimony in response to nonincriminating questions.

On October 1, 2025, the Bank opposed Willmon's motion to compel Handrich's testimony, citing Willmon's filing of a complaint against the Bank with its federal regulator, the Federal Deposit Insurance Corporation ("the FDIC"). That complaint had included a copy of Handrich's affidavit in support of Willmon's claim that the October 2023 loan documents were "forged" and requested that the FDIC refer the evidence to a law-enforcement agency for criminal investigation.

On October 2, 2025, Willmon supplemented her motion to compel and requested that the trial court continue the scheduled hearing on the Bank's summary-judgment motion until she was able to properly depose Handrich. Relying on Rule 56(f), Ala. R. Civ. P., Willmon asserted that "discovery from Handrich is absolutely critical to [her] claims and defenses" and that the Bank's counterclaim against her seeking a deficiency judgment in excess of $179,000, plus accruing defaulting interest and attorney's fees, is based on the loan transactions involving Handrich's actions. She argued that denying her the opportunity to

obtain this discovery would severely prejudice her ability to mount a full defense and would leave her unable to counter the Bank's narrative or substantiate her own claims of fraud and regulatory violations.

That same day, the Bank filed an omnibus response, opposing all of Willmon's pending motions. In particular, the Bank challenged Willmon's request to extend the discovery deadline on the basis that "there is no reason to allow additional discovery to obtain testimony from Casey Handrich as [she] has invoked her rights under the Fifth Amendment to the U.S. Constitution against self-incrimination due to Willmon's own actions in requesting investigation of Handrich's actions by federal authorities."

On October 29, 2025, the trial court issued an order denying the Bank's motion for a summary judgment. It also issued an order granting, in part, Willmon's motion to compel testimony from Handrich and to impose sanctions and granting Willmon's motion for leave to amend her answer and complaint. Regarding the motion to compel Handrich's testimony, the trial court ordered Handrich to sit for her deposition and provide responses to any and all questions asked of her that were not incriminating in nature.

On November 5, 2025, Willmon filed her amended complaint, once again naming the Bank, Handrich, and Crowder (the buyer of the Grant property at the foreclosure sale) as defendants. That same day, Willmon filed her amended answer and affirmative defenses.

On December 16, 2025, Handrich opposed Willmon's motion for sanctions and requested a protective order to stay the proceedings against her and thereby prevent further deposition questions, discovery, and trial testimony. It is unclear from the materials before us whether the trial court took any action on Handrich's request.

VII. The Bank's Motion for a Partial Summary Judgment on Willmon's Claims Against It

Following additional filings and proceedings, on February 5, 2026, the Bank once again moved for partial summary judgment, and the trial court set the motion for a hearing. In its motion, the Bank argued that it was entitled to a summary judgment in its favor on all of Willmon's claims against it.[2]

[2]We note that, in its motion, the Bank asserted, apparently for the first time, that its counterclaim against Willmon arose out of Willmon's failure to repay the 2022 note as agreed. Specifically, the Bank alleged that Willmon

On March 4, 2026, Willmon filed her opposition to the Bank's motion for a partial summary judgment. In her opposition, Willmon argued that genuine issues of material fact existed "regarding document authenticity, loan authorization, consumer loan classification, compliance with federal lending regulations, the validity of the waiver clause, foreclosure propriety, and the Bank's pattern of deceptive conduct" and that those "disputed facts preclude summary judgment and require resolution by trial."

On March 13, 2026, the trial court granted the Bank's motion for a partial summary judgment on all of Willmon's claims against the Bank. However, Willmon's fraud and notary-misconduct claims against Handrich and her declaratory-judgment claim against Crowder, along with the Bank's counterclaim against Willmon, remained pending.

> "owes to Bank the deficiency balance of the 2022 Note remaining after foreclosure of the 2022 Mortgage, the protective advance made by Bank to pay off a delinquent first mortgage held by Selene Finance in order to preserve the second lien position of the 2022 mortgage, an additional $60,000.00 loan which she has admitted to requesting and admittedly received (and spent) the loan proceeds on a $40,000.00 farm tractor and $15,000.00 land survey on property in Kentucky, plus associated attorney's fees and costs as provided under the terms of the 2022 Note and Mortgage."

VIII. Handrich's Motion to Stay the Proceedings Against Her

On March 26, 2026, Handrich moved the trial court vacate its order compelling her to testify and to stay the proceedings against her. She also requested that the trial court prohibit further deposition questions, interrogatories, and other matters in the case that implicated her Fifth Amendment right. According to Handrich, Willmon's continued questioning of her in the case "could incriminate or reasonably expose Handrich to criminal liability" that would "create[] an undue burden and risk of constitutional harm" for her. She later filed a brief in support of her motion to stay in which she argued that the proceedings should be stayed against her should be stayed until the criminal statutes of limitations have run.

Five days later, Willmon moved for sanctions against Handrich for failing to comply with the trial court's previous order compelling her testimony. According to Willmon, after multiple attempts to get Handrich's counsel to provide dates for the deposition, she was told that Handrich would "not be testifying in this matter." She moved to compel Handrich's responses to her interrogatories and requests for production and to deem admitted her requests for admission that had been served

on Handrich. Willmon also opposed Handrich's motion to stay, arguing that Handrich had failed to demonstrate a concrete, nonspeculative basis for a stay and that a blanket stay would substantially prejudice her.

IX. The Bank's Motion for a Summary Judgment on Its Counterclaim Against Willmon and Willmon's Request for a Continuance under Rul 56(f), Ala. R. Civ. P.

On April 15, 2026, the Bank moved for a summary judgment on its counterclaim concerning the deficiency balance resulting from the foreclosure on the Grant property. The Bank argued that it was entitled to a summary judgment on its counterclaim because that counterclaim was based on Willmon's failure to pay the mortgage payments on the Grant property that had been used to secure the 2022 note. Because the facts and documentation underlying that claim had nothing to do with any alleged illegal conduct by Handrich, the Bank argued, it was entitled to a judgment as a matter of law in its favor on that counterclaim.

The trial court apparently scheduled a hearing on the Bank's motion for May 18, 2026.

On May 9, 2026, Willmon moved the trial court, pursuant to Rule 56(f), Ala. R. Civ. P., to continue the May 18, 2026, hearing on the Bank's motion for a summary judgment until Willmon was able to obtain

complete discovery from Handrich. Willmon maintained that Handrich's testimony was crucial to her ability to defend against the Bank's counterclaim for a deficiency balance following the foreclosure on the Grant property.

The Bank opposed the requested continuance. It argued that Handrich's testimony was irrelevant to the amount of indebtedness that Willmon owed to it. According to the Bank, that indebtedness was based on the second mortgage on the Grant property that was used to secure the 2022 note; it further asserted that "the subsequent foreclosure of said mortgage as a result of Willmon's default thereunder, and the resulting deficiency balance are fully presented and proven in [the] Bank's motion without reference to any documents for which 'the circumstances surrounding the execution, notarization, and handling' could create a genuine issue of material fact."

X. The Trial Court's Orders

On May 14, 2026, the trial court issued three orders: (1) one resetting the summary-judgment hearing for June 2, 2026, and denying Willmon's Rule 56(f) motion to postpone the hearing; (2) one denying both Willmon's request for sanctions against Handrich and her motion to

compel discovery responses from Handrich; and (3) one granting Handrich's motion to indefinitely stay the proceedings against her based on her invocation of her Fifth Amendment right.

Willmon thereafter petitioned this Court for a writ of mandamus. We ordered answers and briefs.

Standard of Review

"A petition for writ of mandamus is the proper method by which to challenge a trial court's decision on a motion to stay a civil proceeding when a party is the subject of a criminal investigation." Ex parte Steinberg, 330 So. 3d 813, 816 (Ala. 2021) (quoting Ex parte McDaniel, 291 So. 3d 847, 851 (Ala. 2019)). Further, this Court has stated:

> "'"The utilization of a writ of mandamus to compel or prohibit discovery is restricted because of the discretionary nature of a discovery order. The right sought to be enforced by mandamus must be clear and certain with no reasonable basis for controversy about the right to relief. The writ will not issue where the right in question is doubtful."'"

Ex parte Finerty, 611 So. 2d 1063, 1064 (Ala. 1993) (quoting Ex parte Bozeman, 420 So. 2d 89, 91 (Ala. 1982), quoting in turn Ex parte Dorsey Trailers, Inc., 397 So. 2d 98, 102 (Ala. 1981)).

It is well settled that "'"'[t]he writ of mandamus is a drastic and extraordinary writ, to be "issued only when 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 Alamo Title Co., 128 So. 3d 700, 708 (Ala. 2013) (citations omitted).

Discussion

As stated previously, Willmon has petitioned this Court for a writ of mandamus directing the trial court to (1) vacate its order granting Handrich a stay of the civil proceedings against her based on her invocation of her Fifth Amendment right and (2) vacate its order denying Willmon's request to compel Handrich to respond to her discovery and submit to a deposition. We will address each request for mandamus relief in turn.

I. The Trial Court's Blanket Stay of the Civil Proceedings Against Handrich Based on the Invocation of Her Fifth Amendment Right

Willmon contends that, when a party seeks to stay civil proceedings based on Fifth Amendment concerns, Alabama law requires the trial court to engage in a careful, fact-specific balancing analysis. Relying on our Court's prior mandamus decisions in Ex parte Baugh, 530 So. 2d 238 (Ala. 1988), Ex parte Ebbers, 871 So. 2d 776 (Ala. 2003), and Ex parte

Rawls, 953 So. 2d 374 (Ala. 2006), she contends that that analysis must consider (1) whether the civil and criminal matters are parallel, (2) whether the privilege is genuinely threatened, and (3) whether the movant's interests outweigh the prejudice to the opposing party and the interests of justice. Willmon contends that the trial court was not presented with any evidence of those factors.

Because our caselaw makes clear that a party in a civil case may invoke the Fifth Amendment before indictment only if the threat of self-incrimination is real and reasonable, not merely speculative, and because Handrich's own sworn discovery responses indicate that she knows of no criminal charges, that she knows of no pending investigation, and that there has been no contact from law enforcement or regulators, Willmon contends that the trial court's blanket stay based on Handrich's invocation of her Fifth Amendment right was clear error and that she is, thus, entitled to mandamus relief.

The Fifth Amendment provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." That right applies to both criminal cases and civil cases. The Fifth Amendment

> "'not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution

> but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'"

Ex parte Rawls, 953 So. 2d at 379-80 (quoting Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)).

"A court has the discretion to stay civil proceedings, to postpone civil discovery, or to impose protective orders and conditions in the face of parallel criminal proceedings against one of the parties when the interests of justice seem to require." Ex parte Ebbers, 871 So. 2d at 787-88. Regarding a trial court's decision on a motion to stay civil proceedings based on Fifth Amendment concerns, our Court has previously stated that

> "Alabama caselaw is staunchly committed to the proposition that actual criminal charges are not necessary to justify the assertion of the Fifth Amendment privilege against self-incrimination, so long as the party moving for the stay clearly demonstrates to the trial judge that that party is the subject of an ongoing, and overlapping, criminal investigation."

Id. at 785 (some emphasis added). In Ex parte Rawls, 953 So. 2d at 378, this Court stated that, in order to determine if a stay is warranted under such circumstances, three factors must be addressed:

> "(1) whether the civil proceeding and the criminal proceeding are parallel, see Ex parte Weems, 711 So. 2d 1011, 1013 (Ala.

> 1998); (2) whether the moving party's Fifth Amendment protection against self-incrimination will be threatened if the civil proceeding is not stayed, see Ex parte Windom, 763 So. 2d 946, 950 (Ala. 2000); and (3) whether the requirements of the balancing tests set out in Ex parte Baugh, 530 So. 2d [238, 244 (Ala. 1988)], and Ex parte Ebbers, 871 So. 2d 776, 789 (Ala. 2003), are met."

As stated previously, Willmon argues that the order staying the case as to Handrich based on her invocation of her Fifth Amendment right should be vacated because, she says, the trial court was not presented with any evidence that satisfied the legal principles discussed above. We agree.

In her motion seeking a stay, Handrich asserted over and over again that she has a "reasonable apprehension of a risk of self-incrimination" given the "significant overlap between [her] alleged conduct and the elements necessary to support a criminal charge." She further asserted that the conduct alleged against her by Willmon "is the same conduct [Willmon] alleged in her submission to the FDIC" and that that conduct may be the basis for criminal charges, including charges for fraud and forgery." In short, Handrich said, "the civil case and any potential criminal investigation/case will turn on the same questions concerning the alleged conduct that [Willmon] claims occurred during a

period when Handrich was employed by [the Bank]."

There is nothing in the materials before us that indicates that the FDIC (or any other governmental agency) has begun an investigation into the allegations in Willmon's complaint, much less an investigation in Handrich herself. In fact, in her discovery responses, Handrich admitted that she has never been contacted by either the FDIC or the Alabama State Banking Department regarding any complaints about loans involving Willmon or the Bank. Handrich further admitted that she had no information about any other criminal charges or open investigations related to notary acts or forgery. Thus, Handrich failed to present any evidence showing that she is the "subject of an ongoing, and overlapping, criminal investigation," as our caselaw requires for a stay of civil proceedings based on the invocation of the Fifth Amendment to be upheld. Ex parte Ebbers, 871 So. 2d at 785.

At best, Handrich's statements are simply general assertions that a criminal investigation might take place. Such assertions do not "'clearly demonstrate[],'" Ex parte McDaniel, 291 So. 3d at 853 (emphasis and citation omitted), the existence of a criminal proceeding parallel to this civil proceeding. See Ex parte Merrill, 264 So. 3d 855, 860 n.4 (Ala.

2018) ("Motions, statements in motions, and arguments of counsel are not evidence."); and American Nat'l Bank & Tr. Co. of Mobile v. Long, 281 Ala. 654, 656, 207 So. 2d 129, 132 (1968) (stating that an "unsworn statement of counsel was not evidence"). "'"[A] motion to stay civil discovery during the pendency of a parallel criminal proceeding is not properly granted upon speculative or conclusory grounds."'" Ex parte McDaniel, 291 So. 3d at 854 (quoting Ex parte Ebbers, 871 So. 2d at 788, quoting in turn Ex parte Hill, 674 So. 2d 530, 533 (Ala. 1996)).

Based on the lack of evidence in this case, Handrich has not established that she is the subject of an overlapping, parallel criminal investigation, as the legal principles discussed above clearly require. Thus, we agree with Willmon that that the trial court exceeded its discretion in ordering the stay.[3]

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[3]Additionally, for the reasons discussed above, the second factor discussed in Ex parte Rawls, supra -- whether Handrich's Fifth Amendment right against self-incrimination is threatened by the civil proceeding -- was not demonstrated in the present case. Further, a discussion of the third factor set forth in Ex parte Rawls, supra -- whether the requirements of the balancing test set out in Ex parte Baugh, 530 So. 2d 238, 244 (Ala. 1988), and Ex parte Ebbers, 871 So. 2d at 789, are met -- is also pretermitted. See Ex parte Butts, 183 So.3d 931 (Ala. 2015) (stating that the conclusion that a party's right against self-incrimination was not threatened by a civil proceeding obviated the need to discuss the third issue in Ex parte Rawls).

II. The Trial Court's Denial of Willmon's Request to Compel Handrich to Respond to Discovery and Submit to a Deposition

Next, in the same vein, Willmon insists that the trial court erred when it denied her renewed request to compel Handrich to respond to her discovery requests and to sit for a deposition based on Handrich's invocation of her Fifth Amendment right. According to Willmon, a party may not frustrate discovery by withholding responsive information after a court order and then seek shelter behind a "blanket privilege" unsupported by concrete criminal exposure. Petition at 26.

As our Court has previously stated:

> "The Alabama Rules of Civil Procedure permit very broad discovery and the rules must be broadly and liberally construed. Cole v. Cole Tomato Sales, Inc., 293 Ala. 731, 310 So. 2d 210 (1975). However, [Ala. R. Civ. P.] 26(c) recognizes that the right of discovery is not unlimited, and gives the court broad power to control the use of the process and to prevent its abuse by any party. The rule does not allow an arbitrary limit on discovery, but instead vests the trial court with discretion in the discovery process."

Campbell v. Regal Typewriter Co., 341 So. 2d 120, 123 (Ala. 1976). Accordingly, "[t]he particular details of the discovery process must necessarily be left to the sound discretion of the trial court," and the trial court "may enter appropriate orders under [Ala. R. Civ. P.] 26(c) and if necessary, on a showing of undue burden, it may order alternative means

of discovery." Id. at 124 (citing Burns v. Thiokol Chem. Corp., 483 F.2d 300 (5th Cir. 1973)).

Because we have now determined that the trial court exceeded its discretion in granting Handrich an indefinite stay of the proceedings against her based on her invocation of her Fifth Amendment right, there is a question of how discovery should proceed against Handrich in this case. In light of the legal principles quoted above, we leave to the sound discretion of the trial court what discovery is relevant and proportionate to the needs of this case, without the consideration of such purely hypothetical future criminal charges.

Conclusion

For the foregoing reasons, we grant the petition for a writ of mandamus. We direct the trial court to conduct a hearing addressing the factors provided in Ex parte Ebbers and Ex parte Rawls, supra, and then decide whether to stay the case and allow discovery from Handrich.[4]

[4]We note that Willmon also argues that she has a clear legal right to have vacated (1) the trial court's order denying her request to have sanctions imposed against Handrich for frustrating the discovery process and (2) the trial court's order denying her Rule 56(f), Ala. R. Civ. P., request for relief. Given our resolution here, we need not address those additional grounds for relief in Willmon's petition for a writ of mandamus.

PETITION GRANTED; WRIT ISSUED.

Stewart, C.J., and Wise, Bryan, Sellers, Mendheim, McCool, and Parker, JJ., concur.

Shaw, J., concurs in the result.