REL: January 22, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190969

Ex parte Harbor Freight Tools USA, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Thomas Webster and Juanita Webster

v.

Harbor Freight Tools USA, Inc., et al.)

(Lowndes Circuit Court, CV-18-900016)

MENDHEIM, Justice.

Harbor Freight Tools USA, Inc. ("Harbor Freight"), petitions this Court for a writ of mandamus directing the Lowndes Circuit Court to vacate its order granting a motion to compel discovery in an action Thomas Webster and Juanita Webster ("the Websters") commenced against Harbor Freight and others and to enter a protective order involving the requested discovery. We deny the petition.

I. Facts

The Websters previously hired Randall "Bubba" Wills and Jason Little to construct and install an elevator system in their house. In November 2016, Wills repaired the elevator system. To complete the repairs, Wills purchased from Harbor Freight a "Haul Master" 4,000-pound lifting block, which was designated by Harbor Freight as item, or "SKU," number 60644. According to the Websters' operative complaint, the Haul Master lifting block "was used as a pulley at the top of the elevator to facilitate the lifting process." According to Harbor Freight, its instruction manual for the lifting block expressly states that the lifting block should not be used to transport people in an elevator

system. In fact, Wills posted a sign in the elevator car, or basket, that provided:

> "OPERATING INSTRUCTIONS
> "FREIGHT LIFT ONLY
> "11-30-16
> "DO NOT USE AS ELEVATOR.
> "DO NOT RIDE ON, RIDE IN, SIT ON, OR SIT IN LIFT WHILE IT IS BEING OPERATED.
> "THIS IS NOT AN ELEVATOR.
> "OWNER/INSTALLER NOT RESPONSIBLE FOR INJURY DUE TO RIDING LIFT."

(Capitalization in original.) Despite that posted warning, Wills tested the elevator system and rode in the elevator basket with Thomas Webster after Wills had installed the lifting block and completed the repairs.

On December 18, 2016, the Websters, along with their son Robbie, were riding in the elevator basket when it fell. The Websters' operative complaint alleges that "[t]he 'Haul-Master' 4,000-pound lifting block failed and, as a result, the elevator basket fell with the Websters inside." According to that complaint, the Websters were injured and have had to receive continuing medical treatment because of their injuries. That complaint further alleges that the Websters "are unable to perform some

of their normal activities" and "have suffered, and will continue to suffer in the future, severe pain, mental anguish, and disfigurement."

On April 16, 2018, the Websters filed their original complaint in the circuit court asserting claims against Harbor Freight, Wills, Randall Lee Wiring, and various fictitiously named defendants. On August 6, 2018, the Websters filed a first amended complaint that added Central Purchasing, LLC, as a defendant but was otherwise identical to the original complaint. Against Harbor Freight, the Websters alleged claims of negligence, wantonness, and products liability under the Alabama Extended Manufacturer's Liability Doctrine ("the AEMLD"). Along with their original complaint, the Websters propounded their first set of interrogatories and requests for production of documents to Harbor Freight. In those discovery requests, the Websters sought, among other things, information concerning whether Harbor Freight had "received any complaints prior to this accident, of any accident or incident resulting in personal injury or property damage, which allegedly resulted from a lifting block failing or malfunctioning" and information about the design and development of the lifting block at issue in the case. According to the

Websters, Harbor Freight objected to those requests and largely failed to provide the requested information and documents.

On January 16, 2020, the Websters deposed Harbor Freight's corporate representative, Casper Wypich. Wypich testified that Harbor Freight no longer sells the Haul Master lifting block designated as item number 60644,[1] but that it now sells another 4,000-pound lifting block, designated as item number 62456, and that there is no design difference between item number 60644 and item number 62456. In explaining Harbor Freight's reason for switching to item number 62456, Wypich stated that one of Harbor Freight's vendors manufactures item number 60644 while another vendor manufactures item number 62456 and that Harbor Freight decided to sell only item number 62456 because "it was more in line with our pricing structure."

On January 23, 2020, the Websters propounded a second set of requests for production of documents upon Harbor Freight, following up

[1]In its response to the Websters' requests for the production of documents, Harbor Freight stated that it sold item number 60644 from 2013 to 2016.

on information they had gathered from Wypich's deposition. In those requests, the Websters sought, among other things, "all customer reports and or complaints regarding all Haul-Master 4,000 lb. lifting blocks' bushing, pulley wheel bolt, and/or pulley wheel suffering damage as a result of use"; "contact information for all customer commenters for the Haul-Master 4,000 lb. lifting block from Harbor Freight's website"; and "the contact information for all customer complaints regarding all Haul-Master 4,000 lb. lifting blocks' bushing, pulley wheel bolt, and/or pulley wheel suffering damage as a result of use." On February 24, 2020, Harbor Freight served the Websters with responses and objections to the second set of requests for production of documents in which Harbor Freight contended that the requests were overbroad, unduly burdensome, and not limited to substantially similar incidents or limited in scope as to time, geographical area, incidents involving only item number 60644, or complaints involving any substantially similar incidents of the use or misuse of item number 60644. Additionally, Harbor Freight stated that it would "produce responsive and discoverable documents as soon as an appropriate Protective Order ... has been entered in this case." Harbor

Freight attached to its responses a proposed protective order, by which it sought to protect "documents and information [Harbor Freight] believes to be proprietary, to contain confidential trade secrets, research, development, and/or commercial information, or to be material that may invade the privacy of individuals." The proposed protective order sought to limit the use of any documents Harbor Freight produced to only this action, to guard information Harbor Freight deemed to be proprietary to its business, and to protect what Harbor Freight considered to be private information of its customers.

On February 25, 2020, the Websters' counsel sent an e-mail to Harbor Freight's counsel stating that Harbor Freight's responses to the second set of requests for production of documents had been received but that, "[a]s was the case with the first responses, [Harbor Freight] has objected to each and every request and largely failed to provide the information sought." The e-mail noted that, after Harbor Freight had objected to the first set of requests for production of documents as overly broad, the Websters had "limited the request to similar 4,000 lb 'lifting blocks failing as a result of the bolt running through the pulley wheel

failing, breaking, shearing or the nut backing off.' " The Websters' counsel further observed that the Websters had sought "information regarding other 4,000 lb Harbor Freight lifting blocks with different SKU numbers" because of Wypich's testimony about an identical product with a different item number. The e-mail concluded by stating that, if Harbor Freight did not respond to the second set of requests for production of documents by "the end of the week," the Websters would file a motion to compel production of the requested documents.

On February 27, 2020, Harbor Freight's counsel sent the Websters' counsel a letter responding to the February 25, 2020, e-mail. The letter began:

> "First, the 'elephant in the room' is the failure of the [Websters] to agree with either our proposed Protective Order, or an edited version of the same, that [Harbor Freight] will require before the production of any additional documents that might be responsive and discoverable to [the Websters'] recent requests for production. The main purpose of this Protective Order is to limit protected documents for use only in this current lawsuit. It is also for the protection of any privileged/proprietary/confidential information that concerns [Harbor Freight], non-party vendors/corporations/individuals who also have a right to privacy/confidentiality, and customers of [Harbor Freight] who have a right to privacy/confidentiality, as well."

With respect to documents sought concerning failures of item number 60644, Harbor Freight stated that it "need[s] to know specifically what [the Websters] are claiming as to the cause of the alleged damage, or alleged failure of Item 60644 pulley block at issue in this cause, and need[s] to review the expert opinions and evidence in support of these allegations and opinions." The letter also complained that the Websters' "discovery requests for information related to similar lifting block damage/failure are in no manner limited to a reasonable scope, as to time and geographical area." Harbor Freight further insisted that it had "responded to almost all of the requests made" by the Websters in their first set of requests for production of documents.

On February 28, 2020, the Websters filed a motion to compel in which they sought an order requiring Harbor Freight

> "to produce all documents regarding customer complaints of 4,000 lb. lifting blocks failing, breaking, or wearing, customer reports or complaints regarding the 4,000 lb. lifting block not withstanding the rated load capacity, customer reports of injury or incident, lawsuits regarding the 4,000 lb. lifting block, and all customer contact information for those reporting the same. Finally, [the Websters] request[] this Court require [Harbor Freight] to produce all testing documents for all 4,000 lb. lifting blocks, as their corporate representative

> testified that all are substantially similar regardless of the SKU number."

On April 15, 2020, Harbor Freight filed a motion for a protective order and response to the Websters' motion to compel. In the motion and response, Harbor Freight contended that the Websters' second set of requests for production of documents were not confined to "a reasonable time and geographic location" or to "substantially similar accidents, uses, and as in our case, misuses of the substantially similar product -- here the Item 60644 pulley block." Harbor Freight requested that the trial court adopt its proposed protective order, which it had attached to its motion for a protective order and response to the Websters' motion to compel. Harbor Freight asked the trial court to deny the Websters' motion to compel or, in the alternative, to delay ruling on it until Harbor Freight had the opportunity to depose the Websters' experts so that Harbor Freight would know what specific failure the Websters were alleging occurred with item number 60644.

On May 6, 2020, the trial court held a hearing at which it considered the parties' arguments regarding the Websters' motion to compel. On

July 16, 2020, the trial court granted the motion to compel; the order granting the motion provides:

> "1. This Court has determined that the [Websters are] entitled to documentation from Defendant Harbor Freight regarding previous and subsequent failures known to [it] for lifting block SKU [number] 60644 wherein the said lifting block failed with a load of equal to or less than the advertised load rating of 4,000 lbs, regardless of use/misuse and regardless of geographic location. With respect to this order, documentation must be produced where such failure was a result of 1) the bolt running through the pulley wheel failing, breaking or shearing, 2) the pulley wheel itself deteriorating, failing, breaking or shearing, or 3) the nut that is secured to the bolt that holds the pulley wheel in place backing off the bolt.
>
> "2. Defendant Harbor Freight is ordered to produce documentation of all other failures communicated to [it] in any way for the lifting block SKU [number] 60644 (and any other SKU [numbers] previously or subsequently associated with lifting block SKU [number] 60644), both before and after the date of the alleged incident.
>
> "3. Defendant Harbor Freight is ordered to produce documentation of all other failures communicated to [it] in any way for any other failures of any other lifting blocks that are substantially similar to lifting block SKU [number] 60644, both before and after the date of the alleged incident.
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> "4. Defendant Harbor Freight is ordered to produce all testing documents for lifting block SKU [number] 60644 (and any other SKU [numbers] previously or subsequently associated with lifting block SKU [number] 60644) and other lifting

> blocks that are substantially similar to lifting block SKU [number] 60644."

In response to the trial court's order, Harbor Freight, on August 26, 2020, filed this mandamus petition.

II. Standard of Review

> "Mandamus is an extraordinary remedy and will be granted only where 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 Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991). This Court will not issue the writ of mandamus where the petitioner has ' "full and adequate relief" ' by appeal. State v. Cobb, 288 Ala. 675, 678, 264 So. 2d 523, 526 (1972) (quoting State v. Williams, 69 Ala. 311, 316 (1881)).
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> "Discovery matters are within the trial court's sound discretion, and this Court will not reverse a trial court's ruling on a discovery issue unless the trial court has clearly exceeded its discretion. Home Ins. Co. v. Rice, 585 So. 2d 859, 862 (Ala. 1991). Accordingly, mandamus will issue to reverse a trial court's ruling on a discovery issue only (1) where there is a showing that the trial court clearly exceeded its discretion, and (2) where the aggrieved party does not have an adequate remedy by ordinary appeal. The petitioner has an affirmative burden to prove the existence of each of these conditions."

Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003). "Mandamus relief is appropriate 'when a discovery order compels the

production of patently irrelevant or duplicative documents, such as to clearly constitute harassment or impose a burden on the producing party far out of proportion to any benefit that may obtain to the requesting party.' " Ex parte Vulcan Materials Co., 992 So. 2d 1252, 1259 (Ala. 2008) (quoting Ex parte Ocwen Fed. Bank, 872 So. 2d at 813).

III. Analysis

Before we address the merits of Harbor Freight's petition, we note that the Websters contend that the petition is premature because Harbor Freight did not file a motion for a protective order after the trial court granted the motion to compel.

> "We have previously held that a petitioner's failure to move for a protective order renders his petition premature. See Ex parte Sargent Indus., Inc., 466 So. 2d 961, 963 (Ala. 1985) (stating that a party's failure to seek a protective order from the trial court bars mandamus relief because a protective order 'is the appropriate procedural device for limiting or prohibiting discovery'); Cole v. Cole Tomato Sales, Inc., 293 Ala. 731, 734, 310 So. 2d 210, 212 (1975) (same)."

Ex parte Reynolds Metals Co., 710 So. 2d 897, 899 (Ala. 1998).

Harbor Freight contends that it has complied with the procedure set forth in Reynolds Metals because it did, in fact, seek a protective order

and objected to the second set of requests for production of documents in the hearing on the Websters' motion to compel. Harbor Freight argues that "this Court has never held that the chronological order of the petitioner's request for a protective order, and the trial court's entry of a discovery order, is determinative of the issue whether a petition for mandamus relief is premature." Harbor Freight's reply brief, p. 5.

One problem with that argument, as the Websters observe, is that it omits the fact that the protective order Harbor Freight sought did not address the central issues that Harbor Freight highlights in its mandamus petition. Specifically, the proposed protective order concerns how the parties should handle documents that Harbor Freight considers to be confidential either because the documents contain proprietary or trade-secret information or because the documents contain private customer information. In contrast, in its mandamus petition, Harbor Freight primarily objects to the second set of requests for production of documents because, it believes, the documents to be produced should be limited (1) to a specific period; (2) to incidents occurring in a specific geographic area, preferably Alabama; (3) to documents concerning only

item number 60644; and (4) to accidents involving item number 60644 being used to transport people. Harbor Freight did not seek a protective order in the trial court addressing those four issues.

In Reynolds Metals, this Court noted that "Reynolds argues that its filing of a prehearing motion in opposition to Witherington's motion to compel exempts it from the requirement that it challenge the trial court's ultimate ruling at the hearing by objecting or, thereafter, by a motion for a protective order." 710 So. 2d at 899. The Court rejected that contention because of "the general policy ... to afford the trial court the opportunity to address its alleged error before a party seeks mandamus relief from an appellate court to correct the alleged error." 710 So. 2d at 900. In Ex parte Horton Homes, Inc., 774 So. 2d 536, 540 (Ala. 2000), this Court reviewed its holding in Reynolds Metals and reiterated the rule as follows:

> "Simply put, Reynolds Metals stands for the proposition that a party dissatisfied with the trial court's ruling on a motion to compel discovery must first make a timely motion for a protective order, so as to create a record to support the essential allegation that the petitioner has no other adequate remedy. Id. The motion for a protective order pursuant to Rule 26(c)[, Ala. R. Civ. P.,] and any subsequent mandamus petition must be filed within the time period set for production by the trial court in its order compelling discovery."

(Emphasis added.)

Likewise, in Ex parte Orkin, Inc., 960 So. 2d 635, 640 (Ala. 2006), this Court again concluded:

> "Orkin complied with its procedural obligations to contest the trial court's discovery orders. Orkin moved for a protective order within the 30–day period in which the contested production was compelled. It filed this petition after the trial court denied that motion. We reaffirm the principle that 'the party seeking a writ of mandamus in a discovery dispute must properly move for a protective order under Rule 26(c), Ala. R. Civ. P.[, before petitioning for the writ].' Ex parte CIT Communication Fin. Corp., 897 So. 2d 296, 298 (Ala. 2004); Ex parte Sargent Indus., Inc., 466 So. 2d 961, 963 (Ala. 1985) (a party's failure to seek a protective order from the trial court bars mandamus relief because a protective order is the appropriate 'procedural device for limiting or prohibiting discovery'). This sequencing promotes the sound policy of 'afford[ing] the trial court the opportunity to address its alleged error before a party seeks mandamus relief from an appellate court to correct the alleged error.' Ex parte Reynolds Metals Co., 710 So. 2d at 900. Furthermore, in a petition challenging a discovery ruling, the petitioner cannot demonstrate the 'lack of another adequate remedy' -- one of the prerequisites for the extraordinary relief of the writ of mandamus -- without first filing a motion for a protective order."

(Footnote omitted and emphasis added.)

In Ex parte Gentiva Health Services, Inc., 8 So. 3d 943, 947–48 (Ala. 2008), this Court reaffirmed the holding of Reynolds Metals and concluded

that the petitioner in that case had "sufficiently satisfied the procedural requirement of filing a motion for a protective order before it sought mandamus relief" by filing a "motion to 'reconsider' " an order compelling production of a certain document because "the motion [to reconsider] clearly afforded the trial court the opportunity to address its alleged error before [the petitioner] sought mandamus relief from this Court to correct the alleged error." See also Ex parte Fairfield Nursing & Rehab. Ctr., L.L.C., 22 So. 3d 445, 446 & n.1 (Ala. 2009) (observing that, like in Gentiva Health Services, the defendant's motions to "reconsider" the trial court's orders granting motions to compel production of requested documents constituted, in substance, motions for protective orders).

The clear rule from the foregoing cases, and other similar cases, is that, before filing a petition for a writ of mandamus concerning a trial court's order granting a motion to compel discovery, a party must file with the trial court what amounts, in substance, to a motion for a protective order that notifies the trial court of the errors that the party believes the trial court committed in granting the motion to compel. Harbor Freight did not fulfill that requirement before filing its mandamus petition.

Certainly, Harbor Freight did request a protective order that addressed the treatment of any documents it provided in discovery that it believed contain proprietary or trade-secret information or private customer information, but Harbor Freight did not seek a protective order after the trial court granted the Websters' motion to compel that notified the trial court of the four alleged errors Harbor Freight believes the trial court committed by requiring it to respond fully to the second set of requests for production of documents. Therefore, under the principle stated in Reynolds Metals and its progeny, Harbor Freight's filing of this mandamus petition is premature with respect to its challenge of the trial court's order granting of the Websters' motion to compel.

Insofar as Harbor Freight attempts to challenge the trial court failure to adopt its proposed protective order, we note that the trial court did not expressly rule upon Harbor Freight's request to adopt its proposed protective order in its July 16, 2020, order granting the Websters' motion to compel, and, therefore, it would appear that appellate review as to that

issue is also premature.[2] However, to the extent that it can be inferred that the trial court implicitly denied Harbor Freight's motion to adopt its proposed protective order by declining to enter such an order, even though its motion to adopt its proposed protective order was presented along with Harbor Freight's response to the Websters' motion to compel, Harbor Freight has not alleged or demonstrated that the trial court required the disclosure of any privileged information by implicitly denying its motion to adopt its proposed protective order.

With regard to proprietary or trade-secret information, this Court has stated:

> "A party asserting the trade-secret privilege has the initial burden of showing that the information sought to be shielded from disclosure constitutes a trade secret the disclosure of which would result in injury. Ex parte Miltope, 823 So. 2d [640,] 644 [(Ala. 2001)]. If such a showing is made, the burden

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[2]In its mandamus petition, Harbor Freight asserts: "Although [the Websters], for the first time on February 28, 2020, appeared to have agreed with Harbor Freight's proposed Protective Order, that Protective Order has never been entered by the Circuit Court." That statement appears to be referring to the Websters' motion to compel filed on February 28, 2020, but that motion does not contain any statement indicating that the Websters agreed with Harbor Freight's proposed protective order.

> then shifts to the party seeking the disclosure of the trade secret to show that the information 'is both necessary and relevant to the litigation.' II Charles W. Gamble and Robert J. Goodwin, McElroy's Alabama Evidence § 361.02(5) (6th ed.2009). The trial court then 'conducts a balancing process under which it decides whether the need for the information outweighs any harm that would result from its disclosure.' Id., at § 361.02(3)."

Ex parte Michelin N. Am., Inc., 161 So. 3d 164, 170–71 (Ala. 2014). In its motion for a protective order and response to the Websters' motion to compel, Harbor Freight made no argument, and it submitted no evidence in support of that filing, tending to show that the documents sought in the second set of requests for production of documents would include trade secrets. The proposed protective order simply addresses the mechanics of how the parties should treat documents designated as confidential; it does not detail why any documents that would be produced by Harbor Freight are covered by the trade-secret privilege. Harbor Freight's mandamus petition likewise contains no argument on this subject. Therefore, the potential infringement of Harbor Freight's trade secrets is not a valid ground for granting the mandamus petition.

With respect to what Harbor Freight refers to in its mandamus petition as the disclosure of "nonpublic customer information," Harbor Freight made no showing in the trial court that its customer information was privileged in any way. In its mandamus petition, Harbor Freight's only argument on this subject states:

> "By declining to enter Harbor Freight's proposed Protective Order, the trial court ignored this Court's clear admonishment against ordering discovery of nonpublic customer information without certain protections in place. 'Therefore, a court, when exercising its broad discovery discretion by ordering the discovery of customers' nonpublic personal information, should also issue a comprehensive protective order to guard the customers' privacy.' Ex parte [Mutual] Sav. Life Ins. Co., 899 So. 2d 986, 994 (Ala. 2004)."

As the Websters observe, however, Ex parte Mutual Savings Life Insurance Co., 899 So. 2d 986 (Ala. 2004), "involved a fraud claim against a financial institution, which has an obligation under the Gramm-Leach-Bliley Act to protect its customers' nonpublic personal information. Harbor Freight is not a financial institution subject to [that act]." The Websters' brief, p. 18 n.3. Indeed, the sentence Harbor Freight quoted from Ex parte Mutual Savings Life Insurance Co. is the concluding sentence to the following paragraph:

> "We recognize that in enacting the [Gramm-Leach-Bliley Act ('the GLBA')] Congress expressed an interest in protecting the privacy of the nonpublic financial information of consumers, see 15 U.S.C. § 6801. By enacting the GLBA, Congress evidenced its intent to respect and to protect the privacy of individuals' nonpublic personal information. See 15 U.S.C. § 6801(b)(1) and (3)(stating that the intent of the GLBA is to 'insure the security and confidentiality of customer records and information' and 'to protect against unauthorized access to or use of such records or information which could result in substantial hardship or inconvenience to any customer'). Consequently, the privacy obligation imposed upon financial institutions extends to those who receive customers' nonpublic personal information when a financial institution, pursuant to a court order, releases the information to a nonaffiliated third party. Therefore, a court, when exercising its broad discovery discretion by ordering the discovery of customers' nonpublic personal information, should also issue a comprehensive protective order to guard the customers' privacy."

Ex parte Mutual Sav. Life Ins. Co., 899 So. 2d at 993 (footnote omitted). Thus, Ex parte Mutual Savings Life Insurance Co. does not support Harbor Freight's blanket statement that this Court requires the entry of a protective order whenever nonpublic customer information will be provided in discovery. If requested customer information is, in fact, nonpublic, a protective order might be warranted, but Harbor Freight has made no showing that the documents containing customer information

that the Websters seek contain private information. Therefore, Harbor Freight thus far has not demonstrated that the trial court exceeded its discretion by failing to adopt its proposed protective order.

IV. Conclusion

To the extent that Harbor Freight seeks mandamus relief on the grounds that the trial court's July 16, 2020, order granting the Websters' motion to compel failed to limit discovery (1) to a specific period; (2) to incidents occurring in a specific geographic area; (3) to documents concerning only item number 60644; and (4) to accidents involving item number 60644 being used to transport people, the petition is premature because Harbor Freight failed to seek a protective order raising the need for those limitations on discovery after the trial court entered the order granting the Websters' motion to compel. To the extent that Harbor Freight seeks mandamus relief based on the trial court's implicit denial of its motion to adopt its proposed protective order, Harbor Freight has failed to demonstrate that any information that might be disclosed by providing the requested documents warrants the protections outlined in

the proposed protective order. Accordingly, the petition is due to be denied.

PETITION DENIED.

Parker, C.J., and Shaw, Wise, Bryan, Stewart, and Mitchell, JJ., concur.

Bolin and Sellers, JJ., concur in the result.

SELLERS, Justice (concurring in the result).

A party seeking a writ of mandamus in a discovery dispute is required to file a timely motion for a protective order pursuant Rule 26(c), Ala. R. Civ. P., before petitioning for the writ. Ex parte Gentiva Health Servs., Inc., 8 So. 3d 943 (Ala. 2008). In this case, it appears that, during the hearing on Thomas Webster and Juanita Webster's motion to compel, Harbor Freight Tools USA, Inc., objected to the breadth of discovery, at which time the trial court encouraged it to submit a proposed order defining the parameters of the discovery. However, the trial court ignored Harbor Freight's proposed order and entered a different order granting the motion to compel without the limitations suggested by Harbor Freight. Although Harbor Freight objected and the trial court encouraged it to submit a proposed order limiting discovery, it is unknown whether the trial court implied that the filing of the proposed order would preserve Harbor Freight's objections or whether Harbor Freight merely construed the invitation for a proposed order as the trial court's tacit acknowledgment that it had preserved its objections. Regardless, our rules of civil procedure required Harbor Freight to seek a protective order

challenging the trial court's order granting the motion to compel. A proposed order and a motion for a protective order are clearly distinguishable and are not equivalent or interchangeable. A motion affords the trial court an opportunity to make a specific ruling, thereby preserving any alleged error on the part of the trial court for appellate review. A proposed order on the other hand is nothing more than a suggested order, which the trial court can either sign or reject by drafting a completely different order -- which is precisely what occurred in this case. But, rejecting a proposed order is not the same as denying a motion, nor does the failure of a trial court to adopt a proposed order give rise to a right to appellate review or provide grounds to place a trial court in error. To be entitled to mandamus review regarding a discovery dispute, a petitioner must have challenged the trial court's order compelling discovery by filing a motion for a protective order to which a proposed order might be attached. Otherwise, the petitioner is procedurally barred from seeking mandamus relief from this Court. And, although a trial court might imply that the filing of a proposed order has preserved a party's objections to discovery, such a proposed order is a nullity, and the trial

court's failure to adopt a proposed order cannot be considered a basis for seeking appellate review.

Bolin, J., concurs.