

IN THIS ISSUE

DECISIONS ISSUED ON NOVEMBER 14, 2008

SUPREME COURT OF ALABAMA

Carr, et al. v. Int'l Refining & Manuf. Co., et al., No. 1070770 [*Statute of Limitations: Wantonness claims grounded in trespass are governed by a six-year statute of limitations.*] (Lyons, J., 4-1-4).

Greene, et al. v. Jefferson County Commission, et al., No. 1070300 [*Res Judicata: Plaintiffs' claims were barred by res judicata where a court of competent jurisdiction held in a prior action that review of the challenged statute would violate separation of powers and the substantially identical parties in both actions, which arose from the same nucleus of operative facts, sought the same result.*] (See, J., 7-0-0).

Ex Parte Gentiva Health Services, Inc., No. 1061805 [*Civil Procedure: Defendant in medical liability action has a clear right not to produce documents that do not contain information concerning any of the alleged acts or omissions asserted in the complaint.*] (Per Curiam, 9-0).

ALABAMA COURT OF CIVIL APPEALS

Evans v. First National Bank of Jasper, No. 2070357 [*Summary Judgment: A material issue of fact exists in a contract dispute where both sides support their position with conclusory affidavits that are not substantiated by factual documentation.*] (Thomas, J., 5-0).

Stewart v. Bradley, No. 2070574 [*Construction Law: Trial court erred in denying defendant's judgment as a matter of law as to claims premised on express/implied warranties and/or non-contract causes of action which were waived when the plaintiff executed a contract containing a limited warranty agreement; appellate court ordered a new trial upon a determination that the jury had deliberated over both "good and bad counts".*] (Moore, J., 5-0).

Darby v. Schley, No. 2070027 [*Subject Matter Jurisdiction: Circuit court's entry of summary judgment held void because district court had exclusive jurisdiction over unlawful-detainer action.*] (Bryan J., 5-0).

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Carr, et al. v. Int'l Refining & Manuf. Co., et al., No. 1070770. Several hundred former employees of Arvin Industries ("Arvin") sued Arvin and several of their co-employees (the "original defendants") alleging that they suffered injuries as a result of exposure to toxic chemicals while employed by Arvin. The former employees later amended their complaint to include new claims against sixty-four new defendants (the "new defendants"), while continuing to assert their original claims against the original defendants. The new defendants filed motions to dismiss, or, in the alternative, for summary judgment on the grounds that the claims asserted against them did not relate back to the filing of the original complaint and were thus barred by a two-year statute of limitations. The trial court denied both motions. The new defendants sought certification to file a permissive appeal, which was denied by the trial court. The new defendants then filed a petition for a writ of mandamus from the Supreme Court, which was granted on the grounds that the claims against the new defendants did not relate back to the date the complaint was first filed. The Supreme Court remanded the case to the trial court to determine which, if any, of the claims against the new defendants were timely without the availability of the relation-back doctrine. On remand, the new defendants moved to dismiss all claims against them on the basis that each claim asserted against them was barred by a two-year statute of limitation. The former employees argued that their wantonness claims involved trespass to land and were thus subject to a six-year statute of limitations, while conceding that the rest of their claims were time barred. The new defendants argued, based on a line of Alabama cases, that the wantonness claims asserted against them were subject to a two-year statute of limitation because the claims were based on a products-liability theory. The trial court agreed and dismissed all claims against the new defendants. The former employees appealed the trial court's ruling to the Supreme Court, which reversed. The Supreme Court distinguished the cases cited for the proposition that allegations of wanton conduct in a products liability context are governed by a two-year statute of limitations by showing that no argument was made in those cases that a longer limitations period applied. The Court held that for wantonness claims grounded in trespass, a six-year statute of limitations period applies.

[Click here for Opinion](#)

Greene, et al. v. Jefferson County Commission, et al., No. 1070300. Two groups filed class actions to enforce provisions of a statute allowing county employees who had previously opted out of the general retirement system to opt back in and employees who had not opted out to convert periods of unpaid service to paid service. The class actions were consolidated (the "prior action"), and the trial court found that the statute was not unconstitutional and ordered the county to implement the statute. The county then passed a resolution which provided that any employee converting unpaid service to paid service would forfeit retirement benefits under two unrelated county retirement plans. Plaintiffs in the prior action moved for supplemental relief from the resolution, but the trial judge denied their motion and certified the judgment as final. At no time did any party to the prior action appeal any of the trial court's rulings. Plaintiffs in the present action subsequently filed suit seeking a declaratory judgment that the county commission had retaliated against and/or administered unequal treatment to county employees through the resolution and a permanent injunction precluding enforcement of the resolution. Defendants moved for summary judgment which the trial court granted. Plaintiffs filed a post-trial motion seeking to have the trial judge recuse himself, but that motion was denied along with plaintiffs' other post-judgment motions. On appeal, the Alabama Supreme Court affirmed the trial court, holding that (1) defendants sufficiently complied with Rule 56(c) requiring a narrative summary of undisputed facts be included with a summary judgment motion; (2) the trial court's denial of supplemental relief in the prior action was a final judgment on the merits; (3) plaintiffs' claims in the present action were barred by res judicata because there was a final judgment on the merits in the prior action, rendered by a court of competent jurisdiction, involving substantially identical parties, and the same cause of action; and (4) defendants were not judicially estopped from asserting the defense of res judicata because their positions were consistent in both the prior action and the present action.

[Click here for Opinion](#)

Ex Parte Gentiva Health Services, Inc., No. 1061805. Plaintiff filed a medical malpractice action against Defendant Gentiva and one of Gentiva's former employees arising from the administration of home health care. After a hearing on discovery issues, the trial court ordered Defendant to produce the former employee's personnel file, as well as the former employee's resignation letter. Defendant filed a Motion to Reconsider which was denied. Defendant then sought a writ of mandamus compelling the trial court to vacate its discovery order requiring Defendant to produce the resignation letter. As a preliminary matter, the Court rejected Plaintiff's argument that Defendant was procedurally barred from seeking the writ because it failed to first seek a protective order. Defendant moved the trial court to reconsider its ruling to produce the letter, and this motion afforded the trial court the opportunity to address the alleged error prior to Defendant's writ for mandamus. Substantively, Defendant's motion to reconsider was a motion for a protective order, which was sufficient to satisfy Defendant's procedural obligation. The Court then agreed with Defendant that the resignation letter was protected from discovery under Ala. Code § 6-5-551 of the Alabama Medical Liability Act of 1987, § 6-5-440, *et seq.*, which prohibits a party "from conducting discovery with regard to any other act or omission." The resignation letter did not contain any information concerning any of the alleged acts or omissions set forth in the complaint and, thus, the plain language of the statute prohibited Plaintiff from obtaining the letter through discovery. Defendant had a clear right to have the trial court's discovery order vacated. Accordingly, the Court issued the writ ordering the trial court to vacate its discovery order.

[Click here for Opinion](#)

ALABAMA COURT OF CIVIL APPEALS

Evans v. First National Bank of Jasper, No. 2070357. Nora Evans defaulted on an auto loan held by the First National Bank of Jasper. The Bank sued Evans in district court, alleging a breach-of-contract claim seeking the balance due on the contract, plus an attorney fee. The district court entered a judgment for the Bank for the full amount owed on the loan, plus fees and costs. Evans appealed to the circuit court, and the Bank again filed for summary judgment. The Bank's motion was supported by an affidavit and the Bank's vice president stating the amount Evans owed on the loan and stating that the Bank had demanded possession of the vehicle but that Evans had refused to relinquish control of the vehicle. Evans filed an affidavit in response, acknowledging that she was in default, but disputing the amount she owed under the loan, denying that she ever refused to relinquish control of the vehicle, and stating that the Bank should have repossessed the vehicle in order to mitigate its damages. The circuit court granted the Bank's motion, and Evans appealed to the Alabama Court of Civil Appeals. The Court first noted that summary judgment is appropriate when there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law. If the moving party makes a *prima facie* showing that it is entitled to summary judgment, the burden shifts to the non-movant to show "substantial evidence" that summary judgment is inappropriate. The Court explained that conclusory allegations unsubstantiated by any facts are not admissible in support of or in opposition to a summary judgment motion. The Court noted that neither of the affidavits filed in this case were substantiated with factual documentation. The Court held that material issues of fact existed, reversed the judgment, and remanded the case.

[Click here for Opinion](#)

Stewart v. Bradley, No. 2070574. Plaintiffs entered into a "Sales Contract", which waived all expressed or implied warranties not specifically addressed therein, with Defendants in which Plaintiffs agreed to purchase a home. Thereafter, Plaintiffs moved into the home and immediately experienced serious problems with construction of the home. Plaintiffs complained to Defendants, and Defendants failed to remedy the construction defects per the terms of the sales contract. Plaintiffs filed suit against Defendants alleging various causes of action including suppression, breach of implied warranty of habitability, breach of contract, and "third party beneficiary", arising from the negligent construction of their house. Defendants filed a motion for summary judgment and trial court dismissed all counts except for negligent installation and construction, negligent supervision, and breach of contract. At trial, Defendants moved for judgment as a matter of law, which the trial court denied, and the jury found for Plaintiffs. Defendants appealed. On appeal, the Alabama Court of Civil Appeals determined that the trial court erred in denying Defendants' motion for judgment as a matter of law, as to all claims except for the breach of contract, because Plaintiffs had expressly waived all warranties as well as many other non-contractual causes of action and remedies, when they signed the sales contract as agreed to its comprehensive limited warranty. The Court further determined that only Plaintiffs' breach of contract claim should have reached the jury because there was a factual dispute between the parties as to whether Plaintiffs had given Defendants a reasonable opportunity to repair the house per the terms of the contract. Finally, the Court held that, because the trial court had improperly instructed the jury concerning the claims, the jury had considered both good counts and bad counts and such consideration warranted a new trial. Therefore, the Court remanded the action for a new trial as to only Plaintiffs' breach of contract claim.

[Click here for Opinion](#)

Darby v. Schley, No. 2070027. Plaintiff brought an unlawful-detainer action against defendant in district court. Defendant filed a motion for summary judgment in district court disputing ownership and interest in the property. The district court transferred the case in accordance with Ala. Code § 12-11-9, which mandates transfer from district court to circuit court when the circuit court has exclusive jurisdiction. The district court reasoned the transfer was mandated because the matter was not limited to the unlawful-detainer claim because there was a dispute as to ownership or interest in the real estate. The circuit court granted summary judgment in favor of defendant. On appeal, the Alabama Court of Civil Appeals held that the district court had exclusive jurisdiction over the unlawful-detainer claim; thus, the district court did not have authority to transfer the action. Only after the district court has adjudicated such a claim may the circuit court exercise jurisdiction should a party appeal. Moreover, the plaintiff did not, after the transfer, amend his complaint to add claims over which the circuit court had jurisdiction. The Court held that the circuit court did not have subject matter jurisdiction over the unlawful-detainer claim, and thus the grant of summary judgment was void.

[Click here for Opinion](#)

CLICK [HERE](#) TO VISIT THE APPELLATE WEBSITE

NOTE: The information contained in this document is provided for informational purposes only and is not intended to provide legal advice to any person or entity and should not be used as a substitute for the advice of a qualified lawyer. When using this document, be aware that the information may be out of date and/or may not apply or be appropriate to your particular set of circumstances or your judicial jurisdiction. As legal advice must be tailored to the specific circumstances of each case and the law is constantly changing, you should not rely solely on the information set forth in this document. Anyone with a legal question or legal problem should always consult with and seek the advice of a qualified lawyer. Balch & Bingham LLP does not make any representations, warranties, claims, promises or guarantees about the completeness, accuracy or adequacy of the information in this document. The information in this document does not necessarily represent the opinion of Balch & Bingham LLP, any of its lawyers, or any clients of the firm.

APPELLATE

FOCUS GROUP

ATTORNEYS

ED R. HADEN—CHAIR

[Profile](#) [Email](#)

(205) 226-8795

CHRISTOPHER L. REYDING –

[Profile](#) [Email](#)

(404) 962-3562

CHRISTOPHER L. ANULEWITZ

[Profile](#) [Email](#)

(404) 962-3562

MICHAEL J. BOWERS

[Profile](#) [Email](#)

(404) 962-3535

DAVID R. BOYD

[Profile](#) [Email](#)

(334) 269-3132 Mont.

(205) 226-3485 B'ham

MATTHEW F. CARROLL

[Profile](#) [Email](#)

(205) 226-3451

THOMAS L. CASEY, III

[Profile](#) [Email](#)

(205) 226-3400

GREGORY C. COOK

[Profile](#) [Email](#)

(205) 226-3426

R. PEPPER CRUTCHER, JR.

[Profile](#) [Email](#)

(601) 965-8158

MICHAEL L. EDWARDS

[Profile](#) [Email](#)

(404) 962-3401

P. STEPHEN GIDIERE, III

[Profile](#) [Email](#)

(205) 226-8735

DANIEL E. HARRELL

[Profile](#) [Email](#)

(205) 226-3489

LEIGH ANNE HODGE

[Profile](#) [Email](#)

(205) 226-8724

W. JOSEPH MCCORKLE, JR.

[Profile](#) [Email](#)

(334) 269-3134

KELLY F. PATE

[Profile](#) [Email](#)

(334) 269-3130

JOHN D. PICKERING

[Profile](#) [Email](#)

(205) 226-8752

JOSHUA Z. ROKACH

[Profile](#) [Email](#)

(202) 661-6345

JASON B. TOMPKINS

[Profile](#) [Email](#)

(205) 226-8743

DORMAN WALKER

[Profile](#) [Email](#)

(334) 269-3138

CONTRIBUTORS

CONRAD ANDERSON IV

DAVID R. BURKHOLDER

LOUIS M. CALLIGAS

MARCUS R. CHATTERTON

JENNIFER HOOVER CLARK

BRUCE J. DOWNEY, IV

ROBIN A. FRANCO

CHRISTOPHER F. HEINSS

TYRELL F. JORDAN

DAVID A. LESTER

M. TODD LOWTHER

NEAH L. MITCHELL

JOSEPH SEAWELL MOORE

STEVEN R. PARKER

LINDSAY S. REESE

J. PATRICK RUNGE

J. HOUSTON SMITH, III

PATRICK H. STRONG

TYRUS B. STURGIS

BIRMINGHAM OFFICE

1901 SIXTH AVENUE NORTH

SUITE 1500

BIRMINGHAM, AL 35203

(205) 251-8100

MONTGOMERY OFFICE

105 TALLAPOOSA STREET

SUITE 200

MONTGOMERY, AL 36104

(334) 834-6500

ATLANTA OFFICE

30 IVAN ALLEN, JR. BLVD., NW

SUITE 700

ATLANTA, GA 30308

(404) 261-6020

GULFPORT OFFICE

1310 TWENTY FIFTH AVENUE

GULFPORT, MS 39501

(228) 864-9900

JACKSON OFFICE

401 EAST CAPITOL STREET

SUITE 200

JACKSON, MS 39201

D.C. OFFICE

801 PENNSYLVANIA AVE. NW

SUITE 325

WASHINGTON, D.C. 20004

(202) 347-6000

BALCH & BINGHAM LLP

[HOME PAGE](#)