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CASE SUMMARIES

Southeast Environmental Infrastructure, L.L.C. v. Rivers, No. 1060615. The Court previously remanded this case with directions to the trial court to hold a hearing on the motion for remittitur filed by Southeast Environmental Infrastructure, L.L.C. ("SEI"). The trial court held such a hearing and upheld the \$1,100,000 in compensatory damages and \$400,000 in punitive damages previously awarded to Larry Rivers in his action against SEI. In doing so, the Court entered a written order recognizing that the evidence showed that, in addition to medical bills of \$270,000, Rivers was permanently impaired as a result of his traumatic brain injury. The Supreme Court of Alabama affirmed the trial court's order.

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Self v. Slaughter No. 1061041. Husband and wife executed identical wills providing for a family-fiduciary trust upon the death of the first and distributions among each other's children. Additionally, husband and wife executed an agreement not to change their wills without the other's consent. The spouses transferred assets to create two equal individual estates. Subsequent to the transfers and execution of the wills, the husband lost a significant portion of his estate in the stock market. After the husband's death, the wife created a revocable trust to own all of her assets. The effect of the trust was that there would be no assets to distribute to the husband's children as provided in the reciprocal wills. Upon the wife's death, the husband's children brought suit against the trustee of the revocable trust seeking a declaratory judgment that the transfer of assets into the trust was a nullity as it violated the agreement between the spouses. The trial court granted summary judgment for the husband's children, finding that the transfer of assets breached the contract between the husband and wife not to change the wills. On appeal, the Alabama Supreme Court affirmed, reasoning that the transfer of assets to make husband and wife's estates equal was proper consideration for the agreement not to change the wills and was thus unaffected by the later anticipated diminution of the husband's estate. Thus, husband and wife executed a valid and enforceable agreement not to revoke his or her will, and the creation of the revocable trust constituted a breach as it was created for the sole purpose of defeating that agreement between the spouses.

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Lawson v. Moore, No. 1070634. Defendant obstetrician/gynecologist diagnosed Plaintiff with an ectopic pregnancy. Defendant instructed Plaintiff as to the dangers of her condition and suggested the Plaintiff either surgically remove the fetus or use a chemical injection to terminate the pregnancy. Plaintiff expressed that she did not want to undergo a surgical operation and opted for the chemical treatment, which successfully terminated her pregnancy. After termination of the pregnancy, Plaintiff filed this medical malpractice lawsuit against Defendant alleging that at the time she received the chemical injection, she in fact had a viable intrauterine pregnancy. Plaintiff claimed that Defendant negligently failed to discover the intrauterine pregnancy and negligently recommended the chemical injection. The cause was tried before a jury and the jury was unable to reach a verdict. Defendant moved for a mistrial and for a judgment as a matter of law. The trial court entered an order granting Defendant's motion for a judgment as a matter of law without explaining its basis. The sole issue on appeal was whether Plaintiff offered substantial evidence indicating that she had a viable intrauterine pregnancy when the chemical injection was administered. Defendant's expert testified that Defendant acted appropriately and that the pregnancy would have failed nevertheless. However, Plaintiff's expert testified that he believed to a reasonable degree of medical certainty it was inappropriate for Defendant to have administered the chemical injection and that there were other options that were available that would not have killed the baby. The Supreme Court held that the testimony provided by Plaintiff's expert constituted substantial evidence that a viable intrauterine pregnancy existed and that, based on the information available to him, Defendant acted negligently in recommending and administering the chemical injection. Because conflicting substantial evidence was before the jury, the trial court erred in granting Defendant's motion for judgment as a matter of law.

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Ex parte Staats-Sidwell, No. 1071602. Plaintiffs filed suit against defendants/petitioners alleging that defendants had breached their duties as directors of a corporation by participating in the formation of a competing facility. The trial court entered a partial summary judgment, in favor of plaintiffs, holding that defendants were liable for breach of fiduciary duty and the corporate-opportunity doctrine. Thereafter, the trial court, in response to numerous motions, responses, and arguments from both parties, granted plaintiffs access to the books and records of the competing facility. Additionally, the trial court ordered that certain dividends due to the defendants were to be paid to the clerk of the court. Defendants petitioned the Supreme Court for a writ of mandamus directing the trial court to vacate its order. In denying the petition, the Alabama Supreme Court held that, while petitioners sought relief from an order meant to resolve "numerous motions", petitioners had failed to comply with the requirements of *Ala. R. App. P. 21(a)(1)(E)* when petitioners did not furnish the Court with a copy of any of motions which would be "essential to an understanding of the matters set forth in the petition." Indeed, the Court noted that petitioners' mandamus failed to even mention the motions at issue. Furthermore, the Court noted that petitioners failed to provide any information concerning their responses to any motions or their arguments in the trial court, whether written or oral. The Court held that these deficiencies were fatal to the petition because on mandamus the Court looks only to the factors actually argued before the trial court.

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Henriksen v. Roth, No. 1060875. Plaintiff sued defendants dentist and professional corporation under the Alabama Medical Liability Act after experiencing pain and medical complications allegedly resulting from dental procedure. After a jury returned a verdict for the defendants, Plaintiff appealed the trial court's overruling of certain objections to jury instructions and denial of plaintiff's motion seeking judicial estoppel of defendants' argument that dentist was not disabled at the time of surgery. The Supreme Court affirmed, holding that defendant dentist's earlier applications for disability benefits and subsequent lawsuit concerning denial of those applications were not "clearly inconsistent" with defendants' position that the dentist was not disabled at the time of surgery because "[q]ualifying for disability benefits under an insurance policy ... is not necessarily the same thing as actually being incapable of performing some work obligations." In addition, the Court held that defendants gained no unfair advantage because plaintiff argued that the dentist "breached the standard of care by failing to inform her of his mental and physical condition, not that he breached the standard of care in his technical performance of the surgery," and she was allowed to present all her evidence of the dentist's condition. Accordingly, judicial estoppel did not apply. The Court also held that plaintiff's objections to the court's refusal to give her lack of consent instruction were not preserved for appeal because specific grounds for the objections were not stated on the record, even though plaintiff's counsel made specific objections at the pre-charged conference. Finally, the Court held that the trial court properly refused to instruct the jury that lack of consent constitutes assault and battery because such "medical battery" was subsumed by the Alabama Medical Liability Act, and the instruction actually given by the trial court covered all issues presented to the jury.

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