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CASE SUMMARIES

SUPREME COURT OF ALABAMA

Hall v. Reynolds, No. 1080408. Plaintiffs filed a complaint containing three counts related to a piece of real property: (1) trespass and compensatory damages, (2) preliminary and permanent injunctive relief, and (3) declaratory relief regarding property rights. After a bench trial, the trial court entered what it titled a "Final Order and Judgment." After the court denied defendant's postjudgment motion, defendant appealed. The Supreme Court dismissed the appeal on the grounds that the appeal did not lie from a final judgment. The Court explained that a final judgment is an essential precondition to any appeal to that Court. The trial court's order did not address plaintiffs' claim for compensatory damages, nor did it award or deny plaintiffs' request for permanent injunctive relief. Further, the order did not locate or define the subject property rights. While the title of the trial court's order implied finality, the substance of the order failed to conclusively determine the issues before the trial court and fully ascertain and declare the rights of the parties. Therefore, the trial court's order was not a final judgment for purposes of appeal. Appeal dismissed.

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Black v. Comer, No. 1070652. Patient filed suit against physician for allegedly exceeding the scope of consent in providing medical treatment. This is the second time this action has come before the Alabama Supreme Court. In **Black v. Comer**, 920 So. 2d 1083 (Ala. 2005) ("Black I"), the trial court had entered partial summary judgment in favor of patient without patient offering proof that physician had failed to exercise the level of care, skill or diligence as required by statute. On appeal, the Supreme Court reversed the trial court's grant of partial summary judgment, explaining that proof that physician failed to exercise the requisite standard of care required expert testimony. On remand, the case proceeded to trial, and the trial court entered judgment on the jury's verdict of \$350,000 in favor of patient. Following the trial court's denial of physician's renewed motion for judgment as a matter of law, for a new trial, or for a remittitur of the damages, physician again appealed to the Supreme Court. On appeal, the Court disagreed with physician's argument that he was entitled to judgment as a matter of law on patient's claim that he exceeded the scope of his consent. The Court concluded that the testimony offered by patient through a board-certified general surgeon stating that physician had exceeded the scope of the consent was substantial and sufficient evidence to present the claim to the jury. Physician also argued that a remittitur was required because the evidence was insufficient to warrant compensatory damages of \$350,000, including mental anguish. The Court explained that although there is a heightened standard of review for excessiveness of an award of compensatory damages for mental anguish, that standard does not apply where, as here, there is evidence of both mental anguish and physical injury. Instead, the Court only reviews the award to determine whether the jury clearly abused its discretion. The Court concluded the jury had not clearly abused its discretion and affirmed the judgment of the trial court.

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ALABAMA COURT OF CIVIL APPEALS

Simmons v. Coosa Co. Board of Educ., No. 2071135. Plaintiff employees worked as nonprobationary aides for the defendant. Plaintiffs contracted to work 30 hours a week for defendant and earned nonprobationary status under these base contracts. Plaintiffs subsequently entered into separate temporary work contracts with defendant agreeing to work 10 extra hours a week. The defendant later cancelled the temporary work contracts. The plaintiffs sued for violations of the Fair Dismissal Act, claiming that they were entitled to a hearing under the Act because the cancellation of the temporary contracts constituted a partial termination of their employment. The trial court granted summary judgment for the defendant, and the plaintiffs appealed. The Court of Civil Appeals stated that to be entitled to notice and a hearing regarding the reduction of their working hours, the plaintiffs must have a property interest in those extra hours. The Court found that the plaintiffs did not have a property interest because they did not have a legitimate claim of entitlement to the temporary hours. The Court further found that the temporary contracts were supplemental to the plaintiffs' base contracts and thus were not entitled to protection under the Fair Dismissal Act. Thus, the Court affirmed the judgment of the trial court.

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Pike v. Reed, No. 2080386. Plaintiff executed a power of attorney authorizing Defendant (Plaintiff's sister) to represent Plaintiff in all matters relating to a specific parcel of real estate. In connection with that authority, Defendant received insurance proceeds for damages resulting from a fire in the residence located on the realty. The proceeds were issued by check written to Plaintiff. Defendant deposited the check into her personal bank account and then distributed funds to the parties' mother to compensate her for her personal property that was damaged in the fire. Plaintiff sued Defendant for conversion of the insurance proceeds, and the trial court granted Plaintiff summary judgment. On appeal, Defendant argued that the trial court erred in granting summary judgment on Plaintiff's conversion claim because the insurance proceeds were commingled with other funds in the bank account and, therefore, could not be specific money capable of identification and the subject of a claim of conversion. Defendant also argued that she could not have converted the funds because she distributed money from the account to the parties' mother, and plaintiff testified that she would have permitted the disbursements. The court rejected Defendant's arguments and held that Defendant converted the insurance proceeds when Defendant deposited the check into her personal bank account. The deposit of the check into Defendant's personal bank account was contrary to Plaintiff's interests. When an agent acts contrary to the principal's interests, the authority conveyed by the power of attorney is strictly construed. The power of attorney did not authorize the deposit, thus, the deposit was a wrongful exercise of dominion over Plaintiff's insurance proceeds. The court also held that the check was specific money capable of identification at the time of the conversion. The later commingling of the proceeds was irrelevant to the issue whether the proceeds were capable of conversion. Likewise, the subsequent use of the proceeds was also irrelevant to the issue of whether the proceeds were in fact converted, though such evidence may have been relevant to mitigate Plaintiff's damages, had the argument been presented to the trial court. Accordingly, the Court affirmed the trial court's judgment and award of damages to Plaintiff.

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