

### IN THIS ISSUE

#### DECISIONS ISSUED ON FEBRUARY 12 AND 19, 2010

#### CHANGING PRACTICES FOR SIGNING SECURITY FOR COSTS BLOCK IN NOTICE OF APPEAL

Alabama's notice of appeal form has a section of the form for security for costs of appeal (i.e., the cost of the court reporter's transcript and the clerk's cost of compiling the record on appeal). The section of the form has a signature block with three lines as follows:

\_\_\_\_\_  
Appellant-principal (L.S.)

\_\_\_\_\_  
Surety (L.S.)

\_\_\_\_\_  
Surety (L.S.)

Traditionally, many lawyers have typed in the name of the appellant (as opposed to signing the lawyer's name as the implicit representative of the appellant) in the first line above and had two lawyers (partners of the firm) sign in the surety blanks. The lawyer, after all, is not the "Appellant-Principal," the client is. Recently, however, the Jefferson County Circuit Court Clerk's Office has changed its practice and is requiring manual signature of some type in the Appellant-Principal blank. A lawyer could: (1) sign his name in the first blank -- "*Ed Haden*" -- but the lawyer is not the Appellant-Principal; (2) have a client sign for Appellant-Principal -- e.g., "*Widget Corp. by John Smith*" -- but the client may not be a lawyer who can represent a corporation in court; or (3) the lawyer could sign for the client: "*Widget Corp. by Ed Haden*." It appears that the Jefferson County Clerk's Office will accept any of the above as long as there is a manual signature for Appellant-Principal. Because the Supreme Court of Alabama attached legal consequences to the signature of a party as a surety on the supersedeas bond portion of the notice of appeal form in *Jones v. Regions Bank*, No. 1060896, 2009 Ala. LEXIS 151 (Ala. June 12, 2009), it seems that the better and more accurate practice is to type in the name of the Appellant-Principal "Widget Corp. by" followed by the manual signature of the lawyer who can represent his client, the Appellant-Principal, in court.

#### SUPREME COURT OF ALABAMA

**Weatherspoon v. Tillery Body Shop, Inc.**, No. 1081131 [*Federal Preemption: State tort claims against towing company relating to the towing and selling of an abandoned vehicle are preempted by the FAAA and the ICCTA.*] (Lyons, J., 8-1). (Issued 02/12/10.)

**Diamond v. Bank of Alabama**, Nos. 1051033 & 1051034 [*Interpretation of Letter of Credit Agreement: Party was obligated under a letter of credit agreement that was separate and distinct from a line of credit agreement that expired by its terms.*] (Parker, J., 9-0). (Issued 02/19/10.)

**Ex parte DePaola**, No. 1071620 [*Procedure: Where a party had sufficient opportunity to discover facts necessary to file amendments to his pleadings but failed to do so in a timely manner, Ala. R. Civ. P. 15 gave the trial court discretion to deny the party's motion to amend.*] (Woodall, J., 5-0). (Issued 02/12/10.)

#### ALABAMA COURT OF CIVIL APPEALS

**Ross v. Lewis**, No. 2080675 [*Unlawful detainer: Trial court erred in dismissing unlawful detainer action where court's judgment was based only on the district court's judgment, which is neither evidence nor a basis for collateral estoppel, and defendants' unsworn affidavit that plaintiff was not the owner of the property.*] (Pittman, J., 5-0). (Issued 02/19/10.)

**Kish Land Co., LLC v. Thomas**, No. 2080565 [*Injunctive Relief: While the trial court did have jurisdiction to grant injunction preventing defendant landowners from blocking road on their property that served as plaintiff landowners' only means of access to and from their landlocked property, the injunction was due to be dissolved because the trial court failed to state in its order the reasons for granting the injunction or that the injunction was necessary to prevent irreparable harm.*] (Pittman, J., 5-0). (Issued 02/12/10.)

### CASE SUMMARIES

#### SUPREME COURT OF ALABAMA

**Weatherspoon v. Tillery Body Shop, Inc.**, No. 1081131. Plaintiff Debra Weatherspoon's vehicle was left in a parking lot where it remained for several days. At the direction of the local police department, Tillery Body Shop, Inc. towed the vehicle and subsequently sold it at auction. Weatherspoon later sued Tillery alleging various state tort claims relating to the towing and selling of the vehicle. Tillery moved to dismiss the complaint alleging that the trial court lacked subject matter jurisdiction over the claims because they were preempted by the Federal Aviation Administration Authorization Act ("the FAAA") and the ICC Termination Act ("the ICCTA"). The trial court dismissed the claims finding that they were preempted. On appeal, Weatherspoon argued that: (1) the FAAA was unconstitutional under the Commerce Clause; (2) Congress did not intend to preempt state law claims in enacting the FAAA and the ICCTA; and (3) her claims are exempt from preemption. The Court held that: (1) the FAAA was constitutional under the Commerce Clause; (2) Congress intended to preempt state law claims in enacting the FAAA and the ICCTA, and that Weatherspoon's claims fell within the scope of claims preempted by the FAAA because the claims related to Tillery's services as a motor carrier of property; and (3) Weatherspoon's claims were not exempted from preemption because they related to the service of towing and selling the vehicle, not the price of the services. The Court affirmed the trial court's dismissal of Weatherspoon's claims against Tillery.

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**Diamond v. Bank of Alabama**, Nos. 1051033 & 1051034. Defendant president of Premiere Business Centers, Inc. ("PBC") entered into a lease for office space and was required to secure a \$200,000 standby letter of credit for the benefit of its lessor in order to secure its rent payment obligations. The Bank of Alabama ("BOA") issued the letter of credit in favor of the Defendant's lessor and committed to loan the amount of \$200,000 until August 1, 2004. In return for this letter of credit, Defendant executed a promissory note to BOA agreeing to pay up to \$200,000 for funds advanced under the letter, a line of credit agreement on behalf of PBC, and a personal guaranty for PBC's debts under the letter. The promissory note and personal guaranty contained clauses that automatically extended their terms for an additional year unless either party provided notice, while the line of credit agreement could only be extended by a writing signed by both of the parties. In August 2004, after the original term of the agreements had expired, BOA made \$200,000 in payments to the Defendant's lessor under the terms of the letter of credit. When Defendant failed to repay the \$200,000 to BOA, BOA brought suit against Diamond, PBC, and the other owner of PBC. The trial court ruled for BOA, awarding \$200,000 in damages plus attorney fees. On appeal, the Supreme Court upheld the award in favor of BOA, and remanded for consideration of whether BOA should have also been awarded interest on the \$200,000. The Supreme Court held that the promissory note and personal guaranty had been automatically extended by their own terms, and thus Defendant was still obligated under those agreements, even though the line of credit agreement had already expired when BOA issued the funds under the letter of credit. The note and the guaranty required the Defendant to repay any payments made by BOA under the letter of credit and did not reference the line of credit agreement. Since the letter of credit was a distinct and independent instrument from the line of credit agreement, Defendant was still obligated to repay the \$200,000 under the letter of credit, even though he was not obligated under the line of credit agreement.

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**Ex parte DePaola**, No. 1071620. Willcutt contracted with Clements Builder ("Clements") for the construction of a commercial building in Montgomery. After constructing the building, Clements sued Willcutt alleging unpaid construction costs. Willcutt answered the complaint and added several counterclaims against Clements. After the close of discovery, and only 10 days before the scheduled trial, Willcutt filed a second amendment to his counterclaims. Three days later, Willcutt attempted to add an additional counterclaim and to amend his answer. Clements moved the trial court to strike each of the requested amendments arguing that Willcutt had not demonstrated good cause for the amendments and that Clements would be substantially prejudiced if Willcutt was allowed to amend. The trial court entered an order denying Willcutt's motions to amend, and Willcutt petitioned for a writ of mandamus. The Alabama Supreme Court denied Willcutt's petition, holding that under Rule 15 of the Alabama Rules of Civil Procedure, amendments to pleadings are to be freely allowed unless there exists some valid reason to deny them such as actual prejudice or undue delay. Based on the evidence before it, the trial court had determined that (a) Willcutt had sufficient opportunity to discover the facts necessary to file his amendments during the discovery period, and (b) Clements would suffer prejudice if the motions to amend were granted. The Court held that these reasons constituted valid grounds for denial and, therefore, Willcutt failed to demonstrate that the trial court exceeded its discretion.

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#### ALABAMA COURT OF CIVIL APPEALS

**Ross v. Lewis**, No. 2080675. Howard Ross filed an unlawful detainer action against Cherika Lewis and Jeffery Tibbs in the Madison County District Court alleging that they failed to pay their rent. The district court denied Ross's claim after a hearing where the defendants claimed that Ross did not own the property and was not their landlord. On appeal to the circuit court, Ross moved for summary judgment and attached the lease, a notice of default, and an affidavit in support. The defendants responded with an unsworn handwritten statement averring only that the district court had already denied Ross relief and that the property did not belong to Ross. Following a hearing on Ross's summary judgment motion, the Court entered a judgment denying the motion and stating that "said case is therefore dismissed." On appeal by Ross, the Alabama Court of Civil Appeals reversed and remanded. The Court explained that on appeal to the circuit court for a trial de novo, the district court's judgment is neither evidence nor a basis for collateral estoppel. The Court further stated that Alabama law does not allow tenant-defendants to assert that third parties, rather than the landlords, hold title to leased property and, in any event, the defendants had introduced no evidence suggesting that Ross was not the owner of the property.

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**Kish Land Co., LLC v. Thomas**, No. 2080565. Karter Thomas, Bennett Hutchinson, and James Easley ("Plaintiffs") owned land in Bullock County with no means of ingress or egress other than over land owned by Kish Land Company, LLC, and Bell Land of Alabama, LLC ("Defendants"). Plaintiffs filed a complaint in the Bullock County Circuit Court seeking an easement by necessity and a preliminary injunction to prevent Defendants from blocking the road Plaintiffs wanted to use to access their land during the pendency of the action. The court entered an order granting the injunction and transferred the action to the probate court for a trial on the merits. On appeal to the Alabama Court of Civil Appeals, Defendants argued that the circuit court did not have jurisdiction to issue the injunction because the authority to grant private right-of-ways belongs under Alabama statute specifically to probate courts. The Court held that while only probate courts can rule on the merits of an action to acquire a private right-of-way, probate courts do not have the power to issue injunctions unless specifically granted by statute, while circuit courts do. Thus the circuit court had jurisdiction to issue the injunction at issue. Next, Defendants argued that the circuit court failed to comply with Alabama Rule of Civil Procedure Rule 65(d)(2), which requires that a court set forth its reasons for issuing an injunction and state that irreparable harm would be suffered in the absence of the injunction. The Court agreed, dissolving the injunction entered by the circuit court. However, the Court stated that Plaintiffs were not precluded from moving the circuit court to again issue a preliminary injunction.

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#### APPELLATE FOCUS TEAM ATTORNEYS

ED R. HADEN—*CHAIR*

[Profile](#) [Email](#)  
(205) 226-8795

CHRISTOPHER L. YEILDING—*EDITOR*

[Profile](#) [Email](#)  
(205) 226-8728

CHRISTOPHER L. ANULEWICZ

[Profile](#) [Email](#)  
(404) 962-3562

MICHAEL J. BOWERS

[Profile](#) [Email](#)  
(205) 226-3535

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) 226-3480

GREGORY C. COOK

[Profile](#) [Email](#)  
(205) 226-3426

R. PEPPER CRUTCHER, JR.

[Profile](#) [Email](#)  
(601) 965-8158

MICHAEL L. EDWARDS

[Profile](#) [Email](#)  
(205) 226-3401

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

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

KRIS KAVANAUGH

DAVID A. LESTER

NEAH L. MITCHELL

JOSEPH SEAWELL MOORE

STEVEN R. PARKER

LINDSAY S. REESE

J. PATRICK RUNGE

J. HOUSTON SMITH, III

PATRICK H. STRONG

#### 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  
(601) 961-9900

#### D.C. OFFICE

801 PENNSYLVANIA AVE. NW  
SUITE 325

WASHINGTON, D.C. 20004  
(202) 347-6000

BALCH & BINGHAM LLP

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