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CASE SUMMARIES

SUPREME COURT OF ALABAMA

Selzer Automotive, L.P. v. Cumberland Plastics Sys., LLC, No. 1090068. Cumberland and Selzer entered into a contract by which Selzer agreed to purchase goods from Cumberland. The contract contained an arbitration provision in which both parties agreed to arbitrate any disputes regarding the performance of the contract through the American Arbitration Association ("AAA"). The arbitration provision further provided that, should arbitration be initiated by either party, both parties agree to pay one-half of the deposit required by the AAA. Subsequently, a dispute arose over Selzer's alleged non-payment of invoices, and Cumberland filed a demand for arbitration. The AAA sent a letter to both parties indicating that the arbitration demand had not yet been properly filed due in part to a failure to pay the \$6,000 initial filing fee. Cumberland had paid only half of the initial filing fee, arguing that Selzer was responsible for paying the remainder pursuant to the contract. The AAA letter indicated that, should Selzer fail to pay the fee, Cumberland could advance Selzer's portion of the fee and claim the fee as part of Cumberland's damages. Cumberland failed to pay the remaining \$3,000 and informed the AAA that it no longer wished to pursue arbitration. Cumberland then filed suit in state court. Selzer answered by filing a demand for arbitration. Cumberland objected and argued that Selzer had either waived its right to arbitration by refusing to pay the \$3,000 initial filing fee or was judicially estopped from claiming the arbitration provision was enforceable. The trial court held that Selzer was precluded from demanding arbitration. The Supreme Court reversed, holding that Selzer had not waived its right to arbitration and was not judicially estopped from moving to compel arbitration. The Court noted that the only impediment to arbitration, the payment of the \$3,000 fee, was within the control of Cumberland. As such, it was Cumberland and not Selzer who abandoned the arbitration claim, and Selzer could not be barred from asserting an arbitration claim which it had not abandoned. Consequently, the Court reversed the trial court and held that Selzer was entitled to move to compel arbitration.

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Ex Parte Dixon & City of Montgomery, No. 1081048. As Administration Division Commander of the Montgomery Police Department, Davis was responsible for locating lost money that had been confiscated from an inmate. A correctional officer name Linda Hamilton was the last employee to handle the money. Upon a cursory investigation into the facts, Dixon conducted a body search of Hamilton to determine that she was not hiding the money on her person. Hamilton later sued Dixon and the City for assault, battery, invasion of privacy, negligent hiring, training, and/or supervision, and false imprisonment. Dixon and the City filed a motion for summary judgment claiming State-agent immunity for Dixon under Ala. Code 6-5-338 and immunity for the City. After hearing oral argument, the trial court dismissed the motion for summary judgment without explanation. Dixon and the City then petitioned the Supreme Court for a writ of mandamus directing the trial court to vacate its order denying their motion for a summary judgment. The Supreme Court agreed that Dixon was entitled to immunity under 6-5-338, finding that the guarding of a city jail by a regular municipal police officer is a "law enforcement duty" within the meaning of § 6-5-338(a); that Dixon was exercising her judgment in the administration of a department of government when she determined that the matter of the missing money required an expeditious resolution; and that Dixon did not act beyond her authority, because the standard-operating-procedures manual provided that "every person entering this facility is subject to be searched at any time." Likewise, the City was entitled to immunity under 6-5-338(b). As such, the Court granted the petition and directed the trial court to vacate its order denying Dixon and the City's motion for a summary judgment and to dismiss the complaint against them.

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ALABAMA COURT OF CIVIL APPEALS

Harris v. Russell Petroleum Corp., No. 2090243. Eddie Harris injured his right knee in 2001, and in 2002, he injured his left knee. Both injuries were work-related, and he received workers compensation benefits for both. In 2008, Mr. Harris underwent bilateral knee replacement surgery. Mr. Harris suffered a stroke one day later, resulting in his death. His dependent, Karen Harris, filed a complaint seeking an award of death benefits and funeral expenses. Harris claimed that the cumulative stress of performing Mr. Harris' job duties had necessitated the knee surgery and that the knee surgery had caused Mr. Harris' stroke and resulting death. The employer denied both of those claims. The trial court entered a judgment in favor of the employer, on the basis that the physicians whose testimony was submitted in the case could not say with a reasonable degree of medical certainty that the knee replacement surgery caused the stroke, and thus there was no clear and convincing evidence to establish a causal connection between the knee surgeries and Mr. Harris' death. Harris appealed to the Alabama Court of Civil Appeals, which reversed and remanded. The Court reasoned that if a worker asserts that the original compensable injury is due to cumulative trauma, then the clear-and-convincing-evidence standard applies to the claim. However, if the worker alleges that the original compensable injury caused the worker to suffer a later sudden, traumatic injury, then the clear-and-convincing-evidence standard would not apply. Because Harris asserted that her husband's bilateral knee surgery led to a sudden, traumatic injury that caused his death, her claim did not have to be proven by clear and convincing evidence. In addition, the trial court erred in requiring Harris to prove to a reasonable degree of medical certainty that Mr. Harris' surgery had caused his stroke. Instead, medical causation in cases involving an accidental injury must be established by showing that the accident caused or was a contributing cause of the injury, taking into account the totality of the evidence, including lay and expert evidence. Witnesses' use of any special words or phrases, such as "reasonable degree of medical certainty," is not required.

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Shadescrest Health Care Center v. Holloway, No. 2081164. Patricia Holloway injured her back and later sued her employer, Shadescrest Health Care Center, for workers compensation benefits. After a trial, the trial court found that Holloway was permanently and totally disabled and awarded benefits accordingly. Shadescrest appealed the judgment arguing, among other things, that the trial court's determination that Holloway was 100% permanently and totally disabled was not supported by substantial evidence. On appeal, the Alabama Court of Civil Appeals noted that the determination of the extent of the employee's disability is a discretionary function of the trial court; the scope of review on appeal is limited to whether the trial court's findings are supported by substantial evidence. Shadescrest argued, in essence, that Holloway's testimony about her limitations was self-serving and could not support the trial court's findings. The Court explained that, although such facts might impact the trier of fact weighing the evidence, the trial court here determined that Holloway's complaints of pain and her reported inability to work were credible in light of the totality of the evidence presented. The Court held, therefore, that the trial court's findings were supported by substantial evidence and affirmed the judgment.

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Lloyd v. Cook, No. 2090638. The Lloyds sued the Cooks for intentional interference with their business. The Cooks counterclaimed seeking damages for abuse of process and other sanctions. The Cooks then moved for summary judgment on the Lloyd's claim. The Court entered a partial summary judgment for the Cooks on June 15, 2009. On October 6, the parties filed a joint stipulation dismissing the Cooks' counterclaims with prejudice. The stipulation was "granted" on October 7. On October 14, the Lloyds filed a motion entitled "Motion for Rule 54 Final Judgment." On November 5, the trial court entered an order requiring the Lloyds to specify which claims remained. On January 21, 2010, the Lloyds responded that they were actually requesting a hearing on a motion to reconsider the June 15, 2009 order. The trial court denied this motion on February 4, 2010, and the Lloyds appealed on March 17. The Court of Civil Appeals dismissed the appeal for lack of jurisdiction. The appellate court explained the trial court's June 15, 2009 partial summary judgment order became final when the parties disposed all remaining claims through their October 6, 2009 joint stipulation of dismissal. Thus, the effective date for calculating the time for filing any post judgment motions or an appeal was October 6, 2009. Moreover, even if the October 14, 2009 motion was deemed a post judgment motion which would have tolled the time for taking an appeal, that motion was denied by operation of law on January 12, 2010. The March 17, 2010 appeal was outside the 42 day time limit in either case.

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King v. Riedl, No. 2081172. Roseann and Bryan Riedl contracted with Jim King for improvements to the Riedls' home. The Riedls paid King for only part of the work. King filed an action in circuit court alleging claims of breach of contract, unjust enrichment, restitution, and misrepresentation. The Riedls filed a motion for summary judgment asserting that King lacked standing to bring his claims because he was an unlicensed home builder. After holding a hearing, the circuit court granted the Riedls' motion and dismissed all of King's claims against them. King appealed. The Court of Civil Appeals found that King violated Ala. Code § 34-14A-14, which prohibits an unlicensed homebuilder from performing work in excess of \$10,000. As a result, the Court found that King was barred from bringing both his contractual and noncontractual claims against the Riedls because all of his claims arose from work he performed in violation of § 34-14A-14. Therefore, the Court affirmed the circuit court's grant of summary judgment in favor of the Riedls.

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