

Alabama Supreme Court Clarifies Statute of Limitations For Wantonness

By Christopher L. Yeilding and Conrad Anderson, IV

The Supreme Court of Alabama's recent decision in *Ex parte Capstone Building Corp.*¹ marks the latest development in what has arguably been a 150-year long evolution of the distinction between "trespass" and "action [or trespass] on the case," with a related consequence being the clarification of what actions are governed by the six-year statute of limitations found in *Ala. Code* § 6-2-34(1) and those that are governed by the two-year catch-all statute in *Ala Code* § 6-2-38(1). While some commentators have suggested that the court's decision in *Capstone* represents a fundamental change in the law, others are less surprised, and are of the opinion that the decision is only a clarification of what the law has always been. Regardless of whether the decision is novel or nothing new, it is now clear: wantonness is not an action for "trespass to person or liberty, such as false imprisonment or assault and battery" and, therefore, does not fall within the six-year statute. Accordingly, the statute of limitations for claims of wantonness is two years.

Trespass vs. Trespass on Case

Under the ancient formulation, "whenever the injury [was] *direct and immediate*,

whether it proceed[ed] from design or negligence, trespass [would] lie. But where the injury [was] *merely consequential*, the remedy must be an action on the case."² Thus, the real difference between trespass and action on the case was the "*directness*" of causation, rather than the *intent* of causation. This rule was the applied distinction in one form or another for well over a century, though there were some attempts to subtly redefine its application.³

Beginning in 1980 with the dissenting opinion of Justice Richard L. Jones in *Strozier v. Marchich*, there has been a steady move away from the ancient distinction and the language (direct/indirect causation) that governed it. In that opinion, Justice Jones wrote:

Whatever vestige of the outmoded direct/indirect distinction between trespass and trespass on the case still exists in Alabama, I would now abandon and adopt instead the more modern tort concept of measuring the cause of action in terms of the degree of culpability of the alleged wrongful conduct.⁴

This was, Jones argued, the way that Alabama courts had applied the rule for quite some time in the past, but the language of the rule had never clearly changed to reflect the rule's application in practice.

After *Strozier*, the Alabama Supreme Court did not revisit this issue until 2004 in *McKenzie v. Killian*.⁵ At that time, the court determined to heed the call issued first by Justice Jones in 1980 and then by Linda Webb's 1998 law review article,⁶ definitively redefining the distinction between trespass and action on the case as one of culpability, not one of causality. After positively quoting the above-mentioned excerpt from Justice Jones's 1980 dissent, the *McKenzie* court noted:

We embrace this reasoning today. We overrule *Sasser* and its progeny to the extent that those cases prefer the theory of causality over intent as the mechanism for distinguishing between actions for trespass and for trespass on the case.⁷

For this reason alone, *McKenzie* represented a significant decision—it articulated the most clear and concise distinction between trespass and action on the case for several decades and arguably longer than that. As far as *McKenzie* established intent as the defining difference between trespass and action on the case, it remains intact today as it did in 2004.

The *McKenzie* court went one step further, however, concluding that "wanton conduct is the equivalent in law to intentional conduct. Such an allegation of intent renders the six-year statutory period of limitations applicable."⁸ Depending

on one's perspective, the *McKenzie* court's conclusion that wantonness was subject to a six-year statute represented either a change in over 100 years of jurisprudence or simply a clarification of existing law and principles. Needless to say, this conclusion created much fodder for debate.

Is Wantonness an Intentional Tort, or is it Something Different?

In his dissent in *Strozier*, Justice Jones followed his above-quoted clarification of the distinction between causality and culpability by appearing to conflate the concepts of "wantonness" and "intent" for statute of limitations purposes:

Wanton conduct, as that term is traditionally used and understood in the jurisprudence of our state, signifies the intentional doing of, or failing to do, an act, or discharge a duty, with the likelihood of injury to the person or property of another as a reasonably foreseeable consequence. Such conduct, resulting in injury, is actionable in trespass and governed by the six-year statute of limitations, in my opinion.⁹

Thus, in Justice Jones' opinion, the *intent to do an act* that might cause injury and the *intent to actually cause an injury* were equivalent in their culpability and, thus, both governed by a six-year statute. The majority in *McKenzie* embraced the reasoning of Justice Jones when it concluded that "wanton conduct is the equivalent in law to intentional conduct."¹⁰

Five years later, the Alabama Supreme Court followed *McKenzie* in *Carr v. International Refining and Manufacturing Co.*¹¹ The plaintiffs in *Carr* alleged claims of wantonness against their former employer arising out of the employees' exposure to toxic chemicals. Following a discussion about the effect of the decision in *McKenzie*, the court held:

The former employees in this case have alleged that the new defendants engaged in wanton conduct that resulted in injury to them.

Accordingly, under the analysis announced in *McKenzie*, [], the six-year limitations period of § 6-2-34(1) applies.¹¹²

In a lengthy dissent, Justice Murdock argued that the court should recognize the distinction between intent to do an *act* and intent to *cause an injury*. Nevertheless, a result of *McKenzie* and *Carr* was that claims for any tortious injury, including wantonness, that could be shown to result from intentional *conduct* would be subject to a six-year statute of limitations under § 6-2-34(1), regardless of whether the *injuries* themselves were intentional.

Ex parte Capstone

The facts leading to the court's decision in *Ex parte Capstone* were straightforward. William Walker alleged to have suffered an injury when he stepped onto an allegedly defective manhole cover at a jobsite where Capstone was the general contractor. Walker asserted claims of negligence and wantonness, contending that Capstone knew that the manhole cover was defective because of a previous accident and that it intentionally refused to fix the problem. Finding that Walker's injury occurred more than two years before suit was filed, the trial court dismissed both claims, ruling that Walker's wantonness claim also was subject to the two-year catch-all statute of limitations.¹³



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Although it expressed concerns about its conclusion, the Alabama Court of Civil Appeals reversed the trial court as to the dismissal of the wantonness claim, holding that it was bound by the supreme court's unambiguous statement in *McKenzie* that allegations of intentional conduct, as in claims of wantonness, render the six-year statute of limitations applicable. The supreme court granted Capstone's petition for certiorari review.

Writing for the majority of the court, Justice Murdock—the vigorous dissenter in *Carr*—explained that wantonness had historically been defined as “the conscious doing of some act or the omission of some duty, while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result.”¹⁴ Moreover, wantonness does not require proof that the defendant entertained a specific intent to *cause the injury*.

With that framework in mind, the court determined that claims of wantonness are distinctively different than claims alleging intentional torts, such as false imprisonment or assault and battery referenced in *Ala. Code* § 6-2-34(1). Accordingly, the supreme court in *Capstone* held that

the statute of limitations for wantonness claims must fall within the catch-all provision of the two-year statute of limitations, *Ala. Code* § 6-2-38(1).

Prospective Application of the Two-Year Statute of Limitations

Although decisions of the court are usually applied retroactively, the court elected to apply the rule announced—or clarified, depending on your perspective—in *Ex parte Capstone* prospectively:

[L]itigants whose causes of action have accrued on or before the date of this decision shall have two years from today's date to bring their action unless and to the extent that the time for filing their action under the six-year limitations period announced in *McKenzie* would expire sooner.¹⁵

In other words, if a wantonness claim accrued within the four years preceding the issuance of the *Capstone* decision, the claimant has only two years from the issuance of *Capstone* to file the claim. Claims that accrued more than four years prior to the issuance of *Capstone* must be filed within the six-year statute of limitations.

Conclusion

In the past, resourceful practitioners with claims that were clearly time-barred by the two-year statute of limitations for negligence nevertheless would file suits alleging claims of wantonness. Such claims often faced an uphill battle at summary judgment because of difficulties in proving intent to do the act or cause injury, but the claims usually would be permitted to proceed through costly discovery and sometimes survived summary judgment. Following the *Capstone* decision, alleging wantonness as an effort to get around the two-year time bar is no longer an option. ▲▼▲

Note: As of the date of publication, *Capstone's* application for rehearing on the issue of the prospective application of the court's decision is pending.

Endnotes

1. No. 1090966, 2011 LEXIS 85 (Ala. June 3, 2011).
2. *Strozier v. Marchich*, 380 So. 2d 804, 805 (Ala. 1980) (Jones, J., dissenting) (quoting *Rhodes v. Roberts*, 1 Stew. 145, 146 (1827) (emphasis added)).
3. For a history of this rule's application, see Linda Suzanne Webb, *Limitation of Tort Actions under Alabama Law: Distinguishing Between the Two-Year and the Six-Year Statutes of Limitation*, 49 Ala. L. Rev. 1049 (Spring 1998) or Justice Jones' dissent in *Strozier*, 380 So. 2d 804.
4. 380 So. 2d at 809.
5. 887 So. 2d 861 (Ala. 2004).
6. Webb, *supra* note 3.
7. *McKenzie*, 887 So. 2d at 870 (citing *Sasser v. Dixon*, 273 So. 2d 182 (1973)).
8. *Id.*
9. *Strozier*, 380 So. 2d at 809.
10. *McKenzie*, 887 So. 2d at 870.
11. 13 So. 3d 947 (Ala. 2009) (plurality opinion).
12. *Id.* at 955.
13. *Ex parte Capstone*, 2011 LEXIS 85 at *2-3.
14. *Id.* at *15 (quoting *Carr*, 13 So. 3d at 962-63 (Murdock, J., dissenting)) (quoting, in turn, *Bozeman v. Central Bank of the South*, 646 So. 2d 601, 603 (Ala. 1994) (quotation omitted)).
15. *Id.* at *41.

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