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**DECISIONS ISSUED ON MARCH 12, 2010
 BY THE ALABAMA COURT OF CIVIL APPEALS**

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Cocking v. City of Montgomery, No. 2081198 [*Worker's Compensation: In accidental-injury cases, a worker cannot recover for a psychological disorder unless the worker suffered a physical injury which proximately caused the psychological disorder.*] (Moore, J., 3-0-1).

Ryder v. Mabry, No. 2080992 [*Personal Jurisdiction: Defendant is entitled to summary judgment on a defense of lack of personal jurisdiction where his motion is properly supported by the plaintiff's discovery responses and no evidence is filed in opposition.*] (Byran, J., 5-0).

Norandal U.S.A., Inc. v. Graben, No. 2080679 [*Law of the Case Doctrine: The law of the case doctrine does not permit a trial court to reverse itself on a previous factual finding as long as the facts do not change; Workers' Comp.: The strictly construed "pain exception" requires competent proof of complete physical debilitation.*] (Moore, J., 3-0-2).

CASE SUMMARIES

Brooks v. Franklin Primary Health Center, Inc., No. 2081039. Brooks entered into an employment agreement with the defendant health care facility to serve as an obstetrician-gynecologist in Mobile, Alabama. The agreement provided that Brooks was to see an average of 25 patients a day but did not place any obligations upon Brooks to market or increase patient numbers. Both parties had the right to terminate the agreement upon 4 months notice, and the health care facility had the right to terminate the agreement for cause with only 2 weeks notice. Due to low productivity, Brooks and the health care facility agreed to certain salary and productivity adjustments to the original agreement. The health care facility also reserved the right to take further action if the number of baby deliveries each month remained below 20. Brooks never made more than 15 deliveries in a month during his tenure with the health care facility, and the health care facility notified Brooks that it was terminating his group on the grounds that it was no longer financially viable and terminating his employment agreement with 7 weeks notice. Brooks declined the offer to continue working for the health care facility for the remaining 7 weeks and immediately accepted a position with another provider. Brooks then filed a breach of contract and fraud suit against the health care facility. The trial court granted summary judgment to the defendant-health care facility without specifying grounds. On appeal, the Court of Civil Appeals reversed the trial court's summary judgment, finding that genuine issues of material fact existed on Brooks' breach of contract claim. Although Brooks immediately began working elsewhere and arguably did not suffer any actual damages from the breach, summary judgment on this ground would have been improper because Brooks would have been entitled to nominal damages for a proven breach. Additionally, the health care facility failed to present substantial evidence that Brooks' failure to meet the productivity targets was grounds for termination for cause and failed to demonstrate that its decision to terminate Brooks' group was not a breach of the original employment agreement. As regarded Brooks' fraud claim, the Court held that because, at the latest, Brooks knew or should have known of the alleged fraud by October 2004 – by his own admission, the point in time he knew his employment with the defendant was irretrievably lost – and because this date was more than 2 years before Brooks filed suit, his fraud claim was time-barred.

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Cocking v. City of Montgomery, No. 2081198. Employee worked for 25 years as a firefighter for the City of Montgomery. In 2008, Employee filed a complaint alleging that he had contracted post-traumatic stress disorder from his continuous occupational exposure to life-threatening trauma and death to members of the community. The City filed for summary judgment, arguing solely that the claim was not compensable because the employee's post-traumatic stress disorder resulted from purely nonphysical stimuli. The City contended that mental disorders that are not proximately caused by a physical injury to the body fall outside the scope of the coverage of the occupational-disease article of the Alabama Workers' Compensation Act. The trial court agreed and granted summary judgment. Employee appealed. The Court of Civil Appeals affirmed. The Court held that although the occupational-disease article does not expressly exclude purely mental disorders from coverage, the legislature intended, by the terms of § 25-5-111, to treat occupational diseases similarly to accidental injuries by requiring an injury to the physical structure of the body. In accidental-injury cases, a worker cannot recover for a psychological disorder unless the worker suffered a physical injury and that physical injury proximately caused the psychological disorder. A worker must present the same evidence in order to recover benefits for a mental disease under the occupational-disease article. Because the employee related his post-traumatic stress disorder exclusively to emotional trauma, and not to any physical injury arising out of and in the course of his employment, summary judgment for the City was appropriate.

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Ryder v. Mabry, No. 2080992. Plaintiff filed suit against Defendant, a resident of Virginia. Defendant filed an answer asserting that the trial court lacked personal jurisdiction over him because he did not have sufficient contacts with Alabama. Defendant filed a motion to dismiss and motion for summary judgment for lack of personal jurisdiction claiming that his only contact with Alabama consisted of four telephone calls with Plaintiff, citing Plaintiff's discovery responses in support. Plaintiff did not file any evidence in opposition. The trial court did not rule on these motions prior to trial. Defendant informed the trial court that he would not appear at trial as the trial court lacked personal jurisdiction. At trial, the court denied his motions for lack of proper evidentiary support and entered a default judgment against him. Defendant appealed. On appeal, the Alabama Court of Civil Appeals found that Defendant's motion was properly supported by the Plaintiff's discovery responses, which were already on file with the trial court. The Court found that this evidence established that the trial court lacked personal jurisdiction over Defendant and no evidence was filed in opposition. Accordingly, the Court reversed the trial court with instructions to enter summary judgment in favor of Defendant.

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Norandal U.S.A., Inc. v. Graben, No. 2080679. In November 1999, Graben injured his right leg and knee in the course of his employment with Norandal. He filed a claim for workers' compensation, which was denied, and subsequently filed suit against Norandal. While the litigation was pending, Graben suffered a fall in 2004 due to his knee injury and further injured his hip and back. Following an *ore tenus* hearing, the trial court entered judgment in favor of Graben, awarding permanent-total-disability benefits for his knee injury outside of the workers' compensation schedule. Norandal appealed and successfully argued that Graben had failed to comply with notice requirements for the 2004 fall. Accordingly, the Court of Civil Appeals reversed and remanded. On remand, the trial court again awarded permanent-total-disability benefits outside the schedule of benefits for Graben's knee injury. Norandal again appealed. The Court of Civil Appeals first reviewed the trial court's finding under the altered gait theory, noting that Alabama law has long recognized that an injury to one's leg that alters the manner in which one walks, thereby producing pain in one's hips or back, constitutes an injury to the body as a whole. In the present case, however, the trial court already attributed Graben's hip and back problems to the 2004 fall, a non-compensable event. Thus, because the law of the case doctrine does not permit a trial court to reverse itself on a previous factual finding, the trial court erred in granting Graben's benefits based on an altered gait theory. Second, the Court addressed the pain exception, which also allows for benefits outside of the workers' compensation schedule. The Court noted that the pain exception is strictly construed, requiring competent proof of complete physical debilitation, not just constant and severe pain. Here, the Court found that, while Graben testified that he suffered constant and severe pain, there was not sufficient competent evidence of total debilitation. Accordingly, the Court reversed and remanded the case back to the trial court. Judge Moore and Judge Pittman both concurred specially, and both argued that courts should be cautious in expanding the universe of situations in which unscheduled benefits are awarded.

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