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CASE SUMMARIES

SUPREME COURT OF ALABAMA

Stephens and Stephens Properties, Inc. v. Fines Recycling, Inc., et al., No. 1091111. Defendants/counterclaim-plaintiffs Stephens Properties appealed from a judgment entered on a jury verdict in favor of plaintiffs/counterclaim-defendants Fines Recycling on claims arising out of a commercial lease agreement, in which Fines Recycling leased from Stephens Properties approximately six acres of land for use in Fines Recycling's metal-reclamation business. After Stephens Properties allegedly failed to return stock certificates pledged as collateral by the Fines shareholders, Fines Recycling brought a variety of claims against Stephens Properties, including breach of contract, fraudulent misrepresentation, and conversion. Stephens Properties filed numerous counterclaims, including breach of the lease agreement and equitable claims for relief, as well as seeking to "pierce the corporate veil" to impose personal liability on the Fines shareholders. After a jury found in favor of Fines Recycling on its conversion claims and in favor of Stephens Properties on the breach of the lease agreement counterclaim, the trial court certified the verdict as final under Alabama Rule of Civil Procedure 54(b). Thereafter, Stephens Properties appealed to the Alabama Supreme Court on the grounds that the trial court's Rule 54(b) certification was erroneous. On appeal, the Court initially noted that the record did not reveal any reference to Alabama Rule of Civil Procedure 21 regarding the purported severance of the claims for equitable relief from the parties' legal claims. Thus, the trial court did not "sever" the equity claims, but rather ordered separate trials of those equitable claims. Turning to whether the Rule 54(b) certification was valid, the Court found that Stephens Properties' breach of the contract claim had not been fully adjudicated because Stephens Properties' "piercing of the corporate veil" count, which would determine who will pay the judgment on the breach of contract claim (Fines Recycling or its individual shareholders), had not been decided. As such, the Court held that this remaining determination was directly related to the jury's breach of contract award in favor of Stephens Properties. Moreover, the Court noted that should Stephens Properties obtain a judgment against the individual Fines shareholders, that judgment could be set off by the conversion judgment rendered against Stephens Properties. The potential for a setoff affecting the breach of contract judgment weighed against Rule 54(b) certification. In conclusion, the Court held the still pending counterclaims and the potential for a setoff gave rise to the threat of piecemeal appellate review and found that there was just reason for delaying Rule 54(b) certification. Because the jury's verdict was not validly certified as final, the Court dismissed the appeal.

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Nat'l Sec. Fire & Cas. Co. v. DeWitt, No. 1091225. Plaintiff filed a claim with insurer National Security after his mobile home and storage shed were damaged by Hurricane Katrina. National Security issued payment to Plaintiff based on a calculation of the actual cash value ("ACV") of the damage to Plaintiff's home and its contents, including Plaintiff's storage shed. Plaintiff filed a complaint against National Security and two other defendants who were later dismissed from the action ("Defendants"), alleging that Defendants' failure to include payment of 20% for general contractor overhead and profit ("GCOP") in the calculation of his ACV loss breached his policy of insurance. Claiming it was National Security's standard practice to exclude payment for GCOP, Plaintiff sought to represent a proposed class of plaintiffs, pursuant to Rule 23. Defendants objected to class certification claiming that class litigation would be overly burdensome, time consuming, and impractical for a company of National Security's size. Thereafter, Plaintiff filed a motion for class certification, defining the potential class as Alabama citizens who had suffered a loss within the six years preceding the action, whose damage estimates included repairs involving three or more trade skills, and whose ACV payment did not include a GCOP amount. In support of this class, Plaintiff invoked a well-recognized rule that, where three or more building trades are involved in an insured's loss, it is reasonably foreseeable that a general contractor must be involved in the work (the "three-trade rule"). Conversely, National Security presented testimony that the industry-standard in Alabama was to determine GCOP payment on a case-by-case basis and not to follow the three-trade rule. The trial court certified the class, concluding that Plaintiff carried his burden regarding the requirements for class certification: numerosity, commonality, typicality, and ability to fairly and adequately represent the class. The trial court further found that a class action was the superior method of adjudication. On appeal, the Alabama Supreme Court disagreed, holding that Plaintiff failed to show that common questions of law or fact predominated over questions affecting individual class members. In finding that common questions of law or fact did not predominate, the Court noted that National Security paid GCOP when it was reasonably foreseeable that a contractor would be necessary—a decision made on a case-by-case basis. Thus, each potential class member would have to present individualized evidence, or advance individualized arguments, as to whether it was reasonably foreseeable that the service of a general contractor was necessary in each of the claims. The Court also noted that individualized evidence would likely be necessary as to affirmative defenses, estimates as to work required on each claim, and that each claim filed would have to be individually reviewed. Accordingly, the Court found that while there were common questions of law or fact, they did not predominate over individualized issues. The Court also addressed the superiority requirement, holding that because the case required the introduction of evidence related to thousands of different claims, the necessity for individualized inquiry outweighed the superiority of a class-wide resolution. Because Plaintiff failed to meet his burden of establishing predominance and superiority, the Court vacated the trial court's order granting class certification and remanded to the trial court for proceedings consistent with its opinion.

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Springhill Hospitals, Inc., et al. v. Dimitrios Critopoulos, No. 1090946. After Dimitrios Critopoulos's bypass surgery, he was eventually transferred to the cardiac step-down unit. There, one of the cardiac recovery nurses identified a blister on the back of Critopoulos's neck and a pressure ulcer at the base of his spine. After Critopoulos was discharged, his pressure ulcer and blister worsened, and he made multiple visits to the hospital. As late as three years after his bypass surgery, Critopoulos continued to receive treatment for his pressure ulcer and neck wound. Critopoulos filed a medical malpractice claim against the hospital and the nurses alleging that the nurses had breached the applicable standard of care. At trial, Critopoulos offered expert testimony from Penny Jones, a registered nurse who practiced in wound-care management. The hospital and nurses moved to exclude Jones as an expert, arguing that she was not similarly-situated to the defendant nurses. The trial court denied that motion. At trial, Jones testified that the defendant nurses had breached the standard of care. On cross-examination, Jones admitted that she was not a cardiac recovery nurse and that she was not qualified to provide continuous post-surgery care to patients who had just undergone bypass surgery. The jury rendered a verdict for Critopoulos. The Alabama Supreme Court reversed, holding that the trial court erred by allowing Jones to testify as an expert because the relevant standard of care was that owed by cardiac recovery nurses to post-surgical patients who had just undergone cardiac bypass surgery. Jones's testimony revealed that although she was qualified as a wound-care specialist, she was not qualified to provide continuous care to a post-bypass surgery patient in a cardiac-recovery unit. In order to testify as an expert witness regarding the standard of care in a medical-malpractice case, the expert must be similarly situated to the defendant healthcare providers. Because Jones' testimony was the only evidence of the standard of care, the judgment was reversed.

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ALABAMA COURT OF CIVIL APPEALS

Dreading v. Dreading, No. 2100565. After a custody hearing, the guardian ad litem and her client, who was Rebecca Dreading's child, met in the foyer of the courtroom. The guardian ad litem left her file in a chair in the foyer while she and her client momentarily stepped away. During that time, Rebecca removed from a file a notepad containing the guardian ad litem's notes, ripped out the pages containing the guardian ad litem's notes, and discarded the remainder of the pad. When both Rebecca's attorney and the guardian ad litem questioned Rebecca regarding the notebook's whereabouts, Rebecca denied having any knowledge. Thereafter, the trial court held a hearing on the matter at which it found Rebecca in contempt and sentenced her to five days in jail. The trial court's order did not specify whether it found Rebecca guilty of direct or constructive contempt. Rebecca appealed the contempt order. The Alabama Court of Civil Appeals, in reversing the trial court, held that the record on appeal did not support a finding that Rebecca was guilty of either direct or constructive contempt—the two types of contempt set forth under Rule 70A of the *Alabama Rules of Civil Procedure*. The Court noted that Rebecca could not have been guilty of direct contempt because her alleged actions did not take place in open court and in the presence of the trial judge as required by Rule 70A(2)(A). For constructive contempt, the Court noted that Rule 70A(c) requires that the contempt proceeding be initiated by the filing of a petition and that process and notice must issue from the clerk. Because no such petition was filed with the trial court, the Court determined that Rebecca could not have been guilty of constructive contempt.

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John C. Calhoun Comm. College v. King, No. 2100302. Plaintiff filed a claim against John C. Calhoun Community College, among other related defendants (collectively, "the Defendants"), claiming he was wrongfully dismissed without cause and without an opportunity for a hearing. In support of his claim, Plaintiff cited Section 2.4 of Policy No. 619.01 of the Revised Hearing Procedure adopted by the State Board of Education, which provides a probationary employee the opportunity for a hearing if "terminated within the period of a contract." Plaintiff acknowledged that, as a systems analyst/computer programmer employed for less than three years, he was probationary employee and subject to dismissal upon fifteen days' notice without cause or hearing. Nevertheless, he argued that his initial appointment letter constituted a renewable twelve-month contract and he thus was entitled to a hearing under the Revised Hearing Procedure. The trial court granted summary judgment in favor of the Plaintiff on the basis that the appointment letter, which contained a parenthetical reference to "12 months," made Plaintiff a contract employee. The Alabama Court of Civil Appeals reversed the trial court's decision, finding that (1) the reference to "12 months" in Plaintiff's appointment letter was meant to denote a pay period, not a term of employment, (2) the College did not usually offer employment contracts to non-faculty employees, and (3) the letter of appointment itself was not an employment contract for a specified period. In reaching this conclusion, the Court noted that, as a general rule, plain meaning must be given to employment documents where a department or agency presents no evidence as to how the policies controlling such documents are interpreted. Conversely, where a department or agency has presented evidence of how its policies are interpreted or applied, the department or agency's interpretation is controlling unless clearly erroneous. Here, because the Defendants presented evidence that the appointment letter was not interpreted as a contract under the College's policies and that these policies were not clearly erroneous, the Court held that Plaintiff was not a contract employee entitled to a hearing under the Revised Hearing Procedure. Thus, the Court reversed the trial court's grant of summary judgment for Plaintiff and remanded the case for an entry of judgment in favor of the Defendants.

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Daniel Senior Living of Inverness I, LLC v. STV One Nineteen Senior Living, LLC, No. 2100476. The Statewide Health Coordinating Council voted to adjust the State Health Plan to allow for additional specialty care assisted living facility beds in Shelby County. Following the adjustment, both Plaintiff and Defendant applied for a Certificate of Need ("CON") for additional beds. Defendant then applied separately for an emergency CON arguing that there were an unexpected number of elderly dementia patients in Shelby County. The CON Review Board granted the emergency CON, and Plaintiff appealed to the Shelby County Circuit Court, which affirmed the issuance. Plaintiff then appealed to the Alabama Court of Civil Appeals. The Court reversed and remanded, holding that an unexpected number of elderly dementia patients was not the type of unforeseen event endangering the health and safety of the patients that was contemplated by the statutes allowing emergency CONs. The Court noted that the statute specifically listed examples of situations that would constitute an emergency, including failure of equipment and damage caused by natural or manmade disasters. Defendant's emergency CON application did not clearly demonstrate that an emergency like the ones listed in the statute existed. Accordingly, the emergency CON was not properly granted.

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Downing v. Halcyon Oaks Homeowners Association, Inc., No. 2100663. The Halcyon Oaks Homeowners Association, Inc. (the "Association") filed a complaint against Mary Jane Downing, a member of the Association, seeking to recover past-due fees allegedly owed by her to the Association. After the complaint was filed, the Association filed a notice of lis pendens against Downing's property. After Downing paid in full the amount the Association claimed she owed, the Association dismissed the complaint against her ("prior action"). Subsequent to this dismissal, Downing filed the current action against the Association alleging that Defendants failed to allow her to inspect corporate records, breached fiduciary duties owed to her, slandered title to her property, and maliciously prosecuted the action against her seeking past-due fees. The Association filed a motion for summary judgment which was granted by the trial court. Downey appealed to the Alabama Court of Civil Appeals. The trial court held that the trial court properly granted summary judgment on the breach of fiduciary duty claim and corporate records claim because these claims were barred by the compulsory counterclaim rule. The Court found that the slander of title claim was not barred by this rule because Downing did not have constructive notice of the filing of the lis pendens during pendency of the prior action. Thus, the Court held that the trial court erred in granting summary judgment on the slander of title claim because genuine issues of material fact existed with regard to the elements of this claim. Additionally, the Court held that the trial court properly granted summary judgment on Downey's malicious prosecution claim because the Association's lawsuit against Downing was not concluded in her favor, but instead was dismissed by stipulation between the parties. Therefore, the Court reversed the trial court's grant of summary judgment on the slander of title claim, affirmed the judgment in all other respects, and remanded the case for further proceedings.

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