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Hilgers v. Jefferson County and Water Works Bd. of City of Birmingham, No. 2090307 [Subject Matter Jurisdiction: Section 11-48-33 of the Code expressly grants subject-matter jurisdiction to the circuit courts over actions to enforce municipal assessments for public improvements, including any methods by which Jefferson County may obtain monetary judgments against property owners.] (Thomas, J., 6-0).

CASE SUMMARIES

SUPREME COURT OF ALABAMA

SSC Selma Operating Company, LLC v. Gordon, No. 1080396. The plaintiff's husband died while at the defendants' rehabilitation facility. The defendants moved to compel arbitration in the plaintiff's subsequent action for wrongful death and negligence. Although the plaintiff admitted to signing several documents on behalf of her husband, she submitted an affidavit denying that she signed the arbitration agreement attached to the defendants' motion. The trial court denied the defendants' motion. A motion to compel arbitration is analogous to a motion for summary judgment: the party seeking arbitration has the burden to prove the existence of a contract calling for arbitration; if it does so, the burden shifts to the non-movant to present evidence that the agreement is not valid. The defendants here attached to their motion to compel a copy of the arbitration agreement allegedly signed by the plaintiff. Although the plaintiff argued that she did not sign it, she never argued that the copy of the agreement was inadmissible, nor did she move to strike it. Therefore, the properly considered agreement itself constituted substantial evidence that a contract existed. However, the plaintiff met her burden of submitting evidence that the agreement was not valid by submitting an affidavit in which she stated she did not sign the agreement. Thus, there was a genuine issue of material fact concerning the existence of an arbitration agreement. Because the complaint demanded a jury trial, that fact question should have been submitted to a jury. The Supreme Court reversed the trial court's order and remanded the case because the trial court had not conducted a jury trial to determine whether an arbitration agreement existed between the parties.

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Lauterbach v. Gordon, Dana, Still, Knight & Gilmore, LLC, No. 1090953. The law firm of Gordon, Dana, Still, Knight & Gilmore, LLC obtained a default judgment against Shelley Simons Ernstberger Lauterbach on the firm's claims for unpaid legal fees. On May 6, 2009, Lauterbach moved to set aside the default judgment on the ground that the fees sought were unreasonable. Following a hearing, the trial court entered an order purporting to deny Lauterbach's motion on November 13, 2009. Lauterbach filed an appeal from this order on December 15, 2009. The Supreme Court explained that postjudgment motions like Lauterbach's are automatically denied if not ruled on within ninety days, absent consent of the parties or extension by the appellate court, pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure. Thus, Lauterbach's motion to set aside was denied by operation of law on August 4, 2009 – ninety days after its filing. Pursuant to Rules 4(a)(1) and (3) of the Alabama Rules of Appellate Procedure, her notice of appeal was required to be filed within forty two (42) days of August 4, 2009 to be timely. Because it was not, the Supreme Court dismissed the appeal for lack of jurisdiction.

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Beasley v. Wells, No. 1080823. Defendant's father ("Testator") died leaving a will directing how his property should be disposed. Item III of the will, entitled "Disposition of Personal Assets," devised all of Testator's personal affects to his wife. The second sentence specifically excluded from this devise all cash, stocks, bonds, notes, and property held for investment ("monetary assets"). Item III went on to state that in the event the Testator's wife predeceased him, he devised "all of said objects of property" to his children. Plaintiff was the trustee of a trust created by the will into which the residue of Testator's estate was to be placed. Testator's wife predeceased him, and the will was admitted to probate. Defendant moved for Summary Judgment, arguing that the unambiguous language of Item III conveyed to Defendant and his sister (Testator's children) Testator's personal assets and his monetary assets. Plaintiff disagreed, arguing that the unambiguous language of Item III indicated that Testator did not intend to grant his monetary assets to his children as part of his will. The trial court granted Defendant's Motion for Summary Judgment, reasoning that, while there was a restriction on the conveyance to Testator's wife (the specific exclusion of monetary assets), there was no such restriction following the conveyance to Testator's children. The Supreme Court reversed and remanded, holding that the language of Item III was unambiguous and, when read in its entirety, indicated that Testator did not intend to give his children more than his wife.

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Green Tree-AL LLC v. White, No. 1071515. In connection with her purchase of a manufactured home from Southland Quality Homes, Inc., Lisa White signed a contract listing Green Tree-AL LLC as an assignee. When White failed to make payments, Green Tree filed suit. White counterclaimed against Green Tree for abuse of process, slander of title, the tort of outrage, fraud, and negligence, and wantonness. Green Tree moved to compel arbitration pursuant to a provision in the contract. The trial court denied the motion, and Green Tree appealed. White argued that Green Tree could not compel arbitration because Green Tree was not a signatory to a contract containing an arbitration provision. In reversing the trial court, the Supreme Court held that nonsignatories can enforce an arbitration provision that is sufficiently broad to indicate that the nonsignatory was contemplated as a party. Here, parts of the arbitration provision contained references to "You", the definition of which included assignees. The Court further concluded that Green Tree, as assignee, was entitled to all rights and privileges held by Southland and that the scope of the provision was broad enough and specifically provided for arbitration of disputes arising from or related to relationships resulting from the contract. Accordingly, the Court determined that the trial court erred in holding that Green Tree lacked standing to enforce the arbitration provision. The Court also rejected White's arguments that the arbitration provision was unconscionable because it required only White – not Green Tree – to arbitrate and because it essentially gave Green Tree the right to pick the arbitrator. The Court held that exemption of one party to the arbitration requirement does not render the agreement unconscionable and that the provision only required the parties to agree on the arbitrator. Additionally, the Court rejected White's argument that the counterclaims were not subject to arbitration because they related to conduct before the trial court and not the parties' contract, finding nothing in the record to suggest that the counterclaims were premised on any actions other than Green Tree's servicing of White's loan.

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Ex parte Michelin North America, Inc., No. 1081268. Gustavo Lopez died in a car accident after the tread of his right rear tire allegedly separated from the tire carcass, causing his vehicle to be uncontrollable. Shane Seaborn, as administrator of Lopez's estate, filed an AEMLD action in Barbour County Circuit Court against Michelin North America and Michelin Americas Research & Development Company (collectively, "Michelin"). Seaborn based venue on his own residence in Barbour County and the allegation that Michelin did business in that county. Michelin answered the Complaint and asserted the affirmative defense of improper venue, as well as indicating that, in the event that venue was proper, venue should be transferred under the doctrine of forum non conveniens. After an amended complaint and an answer with similar defenses, Michelin moved the court for a change of venue due to improper venue or, in the alternative, on the grounds of forum non conveniens. The lower court denied Michelin's motion, finding that Michelin did not file a motion to transfer venue within 30 days as required by Rule 82. Michelin petitioned for a writ of mandamus. The Alabama Supreme Court reviewed Rule 82 and determined that the lower court's decision was in error. Specifically, the Court held that the 30-day requirement of Rule 82 does not apply to improper venue at the commencement of the action. Instead, Rule 82 only requires a "timely motion" by the defendant. Here, the Court held that, by asserting the affirmative defense of improper venue in its answer, Michelin preserved its right to file a timely motion for change of venue. Michelin filed its motion less than two months after filing its answer to Seaborn's amended complaint. The Court determined that this was timely. Accordingly, the Court granted Michelin's petition for a writ of mandamus and ordered the circuit court to transfer the action to a proper venue. Justice Lyons issued a special concurrence in an attempt to avoid any further confusion over Rule 82(d).

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ALABAMA COURT OF CIVIL APPEALS

Allen v. Briggs, No. 2090289. Plaintiff was involved in a motor vehicle accident with a vehicle driven by Gerald Thomas Briggs ("Briggs") and owned by Ed Briggs Mechanical Contractors, Inc. ("EBMC"). Plaintiff accrued \$130,000 in medical bills for treatment of his injuries. Medicare paid all of the medical bills, except for a \$14,000 hospital bill which remained unpaid. Plaintiff sued Briggs and EBMC alleging negligence and wantonness. The trial court granted summary judgment for EBMC. After a trial on the claims against Briggs in which the jury awarded \$30,000 in damages, Plaintiff appealed to the Alabama Court of Civil Appeals. Plaintiff argued on appeal that the EBMC summary judgment was improper and that the jury's verdict was inadequate. The Court of Civil Appeals found that Plaintiff's challenge to summary judgment was untimely, having been filed more than 42 days after the summary judgment was certified as final. The Court also found that the damages awarded to Plaintiff were not inadequate based on the evidence presented at trial which established that Plaintiff had only \$14,000 in unpaid medical bills. Concluding that the damages awarded were sufficient to compensate Plaintiff for both his uncontroverted special damages and for pain and suffering, the Court affirmed the jury's verdict. Further, the Court dismissed the appeal of the EBMC summary judgment. In his dissent from the dismissal of Plaintiff's appeal of the EBMC summary judgment, Judge Bryan argued that a meritorious challenge to the validity of the certification of the summary judgment would make the appeal timely.

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Mobile County Board of School Commissioners v. Long, No. 2090759. The Mobile County Board of School Commissioners terminated the employment of Long, a non-probationary employee, under Alabama's Fair Dismissal Act. Long contested his dismissal. The appointed hearing officer overturned the Board's action, and the Board appealed. The Court of Civil Appeals reversed the hearing officer's decision and remanded the case "for further proceedings consistent with this opinion." Based on this language, the hearing officer determined that the appellate court had intended for there to be additional evidentiary hearings. In response, the Board petitioned the Court of Civil Appeals for a writ of mandamus directing the hearing officer to issue a decision in the Board's favor without any additional hearings. The Court of Civil Appeals granted the petition. It explained that a trial court does not have the authority to reopen a case for additional testimony after a remand except where expressly directed to do so by the appellate court. In this case, the Court of Civil Appeals had not expressly directed the hearing officer to conduct an evidentiary hearing on remand. Rather, it had determined that the Board had complied with the relevant policy and protocols and remanded the case to the hearing officer for "further proceedings" consistent with its opinion. By using the term "further proceedings," the appellate court directed the hearing officer to issue a decision in favor of the Board.

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Hilgers v. Jefferson County and Water Works Bd. of City of Birmingham, No. 2090307. Jefferson County filed a complaint in the Small Claims Division of the Jefferson District Court, seeking to enforce liens that it had placed on three properties owned by the Hilgerses for unpaid sewer-service charges. In its complaint, Jefferson County sought to obtain a monetary judgment against the Hilgerses in the amount of the liens. In August 2008, the district court entered a judgment in favor of Jefferson County on all its claims. The Hilgerses subsequently appealed the district court's judgment to the circuit court for a trial *de novo*. The circuit court entered a summary judgment in favor of Jefferson County on March 25, 2009, reaffirming the liens on the three properties owned by the Hilgerses. The Hilgerses subsequently appealed to the Court of Civil Appeals. Although none of the parties addressed whether the Court had jurisdiction, the Court provided that it may notice a lack of jurisdiction *ex mero motu*. The Court held that Jefferson County had the constitutional and statutory authority to place a lien on the Hilgerses' properties for unpaid sewer-service charges and that Code Section 11-48-33 expressly grants subject-matter jurisdiction over an action to enforce such liens to the circuit court. Because the district court in which the original complaint was filed lacked subject matter jurisdiction, the Court dismissed the appeal for lack of subject matter jurisdiction and instructed the lower courts to vacate their respective judgments in this case.

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