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DECISIONS ISSUED ON FEBRUARY 26 AND MARCH 5, 2010

DEEMED DENIAL OF POST-JUDGMENT MOTIONS

Rule 4(a)(3) of the Alabama Rules of Appellate Procedure provides that the full time period for appeal (42 days) will begin running on the date of entry of an order disposing of any post-judgment motion under Rules 50 (renewed judgment as a matter of law), 52 (motion to amend findings), 55 (motion to set aside default judgment), or 59 (motion for new trial, to alter, amend, vacate judgment, or for recommitment). If the trial court does not rule on these motions, they are deemed denied upon the expiration of the 90th day after the motion became pending. Thus, the appeal period begins to run on the 91st day. The 90-day period for ruling on post-judgment motions can be extended either by express consent of all parties in the record or by the appellate court upon motion made prior to expiration of the original 90 days. For the former, the better practice is to create a written document signed by counsel for all parties and filed with the clerk with a copy to the judge. Without this documentation or an order from the appellate court, one should assume the 90-day period has not been extended. Accordingly, one should count the 42-day appeal period beginning with the 91st day after the post-judgment motion was filed.

SUPREME COURT OF ALABAMA

Noland Health Services, Inc. v. State Health Planning and Development Agency, No. 1061418 [*Administrative Procedure: Applicants for a certificate of need for a healthcare facility must file their notice of appeal of the denial of their application within 30 days of the date when the decision becomes final, whether by a final written order or by operation of law.*] (Per Curiam, 9-0). (Issued 03/05/10.)

Ex Parte Alabama Department of Revenue, No. 1070925 [*Multistate Tax Compact: Income may only be categorized as business income if it arises from a transaction in the regular course of the taxpayer's business.*] (Murdock, J., 8-1). (Issued 02/26/10.)

Ex Parte State of Alabama and Governor Bob Riley, No. 1090026 [*Venue: Actions involving land against state officials in their official capacity must be brought in the official's county of residence.*] (Parker, J., 9-0). (Issued 02/26/10.)

Dixon v. Hot Shot Express, Inc., No. 1070960 [*Alabama Guest Passenger: Statute is not preempted by the Federal Motor Carrier Safety Regulations and only imposes liability for injuries to passengers resulting from a driver's willful or wanton misconduct.*] (Murdock, J., 8-1). (Issued 03/05/10.)

Melton v. Harbor Pointe, LLC, No. 1081096 [*Easements: An easement by necessity requires a showing that the access route is genuinely necessary; mere inconvenience without the easement is not enough.*] (Lyons, J., 5-0). (Issued 02/26/10.)

ALABAMA COURT OF CIVIL APPEALS

Eaton v. Waldrop, No. 2081095 [*Fraud: The intent to deceive is not a necessary element of fraud in Alabama; any false representation, even if made innocently or by mistake, will suffice.*] (Moore, J., 5-0). (Issued 03/05/10.)

Drees v. Turner, No. 2080742 [*Motion to Dismiss: A trial court is not prevented from reentering a dismissal after an appellate court's reversal and remand of the trial court's initial dismissal for consideration of materials outside of the pleadings when reenry of the dismissal, the trial court did not consider any materials outside of the pleadings.*] (Moore, J., 5-0). (Issued 02/26/10.)

McLeod v. White, No. 2080566 [*Procedure: Motions and pleadings are considered according to their substance and not their labels, and a trial court may treat a pleading as a motion so long as no substantial prejudice will result to opposing parties.*] (Pittman, J., 5-0). (Issued 02/26/10.)

Strange v. Davis, No. 2081065 [*Summary Judgment: Because there were genuine issues of material fact concerning the breach of contract, fraud, and wrongful eviction claims, summary judgment was partially reversed.*] (Moore, J., 4-0-1). (Issued 02/26/10.)

Ex Parte Nicholas Kish, No. 2090224 [*Workers' Compensation: An employee is entitled to request that his employer identify a panel of four replacement surgeons even if he has already exercised his right to replace his treating physician from a replacement panel.*] (Moore, J., 5-0). (Issued 03/05/10.)

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Noland Health Services, Inc. v. State Health Planning and Development Agency, No. 1061418. Plaintiff and two other competing healthcare providers filed applications with the State Health Planning and Development Agency ("SHPDA") for a certificate of need to provide a new healthcare facility in Huntsville, Alabama. Once the applications were complete and the applicants were notified of this fact, the SHPDA had 90 days to make a decision on the applications, unless the SHPDA exercised its authority to unilaterally extend the period for 30 days or the period was extended without limitation upon written consent by the applicants. Because some members of the SHPDA's Certificate of Need Board had to recuse themselves, the SHPDA was unable to establish the necessary quorum to decide the application within the time period available for review in this case. Therefore, under Ala. Code § 22-21-275, the applications were deemed to have been denied by operation of law. Plaintiff then filed an action in circuit court seeking a declaration that the applications had been denied by operation of law and that the time period for appealing the denials had passed. Plaintiff also sought an injunction precluding the board from any further consideration of the applications. The circuit court declared that the applications had been denied as a matter of law due to the board's failure to decide the application but also held that the applicable appellate deadlines to the denial ran from the date of its order. Plaintiff appealed the circuit court's tolling of the deadlines for appellate review of the SHPDA's denial of the applications. On appeal, the Court held that the decision denying the applications was final on the date that it was denied by operation of law and that the 30 day time period for filing notice of appeal of its decision was not tolled by the Board's failure to issue a written final order. The SHPDA lost jurisdiction over the application at the time it was denied by operation of law, and the circuit court lacked the authority to entertain an appeal more than 30 days from the date of the final decision, whether in the form of a final written decision or by operation of law. Affirmed in part and reversed in part.
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Ex Parte Alabama Department of Revenue, No. 1070925. In 1998, Kimberly Clark ("KC") sold a paper mill and 375,000 acres of adjacent timberland to Alliance Forest Products, Inc. ("Alliance") for \$600 million. KC classified the income from the sale as "business income," but then attempted to exclude it from its taxable income pursuant to an Alabama Department of Revenue ("ADOR") regulation, which allows companies to exclude income arising from an incidental or occasional sale of a fixed asset used in the regular course of the company's business. ADOR accepted KC's classification of the income as business income but disallowed the exclusion of the income under the exception. KC filed a petition for review with ADOR arguing that if the income was deemed not to be excludable, it should be classified as non-business income and allocated to KC's home state of Texas. On review, ADOR agreed with KC that the sales proceeds were non-business income, but found that the income should be allocated entirely to Alabama, which was where the real property was located. KC appealed ADOR's determination to an administrative law judge ("ALJ"), who held that the income was business income not subject to the exclusion. ADOR appealed the ALJ's decision to the Circuit Court of Montgomery County, which determined that the sales proceeds were non-business income allocable solely to Alabama. KC appealed and the Court of Appeals reversed the Circuit Court's decision, finding that the sales proceeds were business income. ADOR petitioned the Supreme Court for a writ of certiorari. In reversing the Court of Appeals' decision, the Supreme Court explained that the proceeds would properly be categorized as business income only if they arose from a transaction in the regular course of KC's business. The Court determined that because KC had owned and operated the property at issue for thirty-four years before selling the property as part of a corporate restructuring, the sale could not be said to have occurred in the regular course of KC's business. Put differently, the Court determined that KC was not regularly engaged in the buying and selling of comparably sized pulp-industry properties. Accordingly, the Court reinstated ADOR's finding that the sales proceeds were non-business income allocable solely to Alabama.
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Ex Parte State of Alabama and Governor Bob Riley, No. 1090026. Plaintiff sought to recover certain real property located in Baldwin County, which he had conveyed to the state. Plaintiff filed an action in Baldwin County against the State of Alabama and Governor Bob Riley, in his official capacity. Defendants moved for a change of venue based on the rule that when state officials are sued in their official capacity, Montgomery County is the only proper venue absent specific statutory authority. Plaintiff argued that Alabama Code § 6-3-2 required that all actions for the recovery of land be brought in the county where the land is located. Following the trial court's denial of the change of venue motion, the defendants filed a petition for a writ of mandamus. The Supreme Court granted the writ, holding that § 6-3-2 only applies to actions against individuals. Since Governor Riley was only sued in his official capacity, § 6-3-2 was inapplicable and venue should have been transferred to Montgomery County. Further, the Court dismissed the State of Alabama based on sovereign immunity.
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Dixon v. Hot Shot Express, Inc., No. 1070960. Defendant tractor-trailer driver was in an accident resulting in his passenger's death. The representative of the passenger's estate filed a wrongful-death action against the defendant driver and his employer. Following the close of evidence, the defendants requested that the Court charge the jury under the Alabama Guest Passenger Statute, Ala. Code § 32-1-2, which only imposes liability on the driver of a motor vehicle for the injuries of his or her passenger that were the result of the driver's willful or wanton misconduct. The plaintiff argued that the provisions of the Federal Motor Carrier Safety Regulations, which required a driver to exercise "extreme caution," preempted the Alabama statute. The trial court disagreed, and the Supreme Court affirmed. There was no conflict between the Alabama law and the federal regulation, and thus implied preemption did not apply. The Court held that the federal regulation spoke to the driver's duty to others while driving in hazardous conditions and did not create a cause of action for failure to exercise "extreme caution."
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Melton v. Harbor Pointe, LLC, No. 1081096. Plaintiff purchased a parcel from her aunt within a subdivision formerly owned by her ancestor. The parcel to the east was owned by Plaintiff's uncle. Because Plaintiff's parcel was landlocked, her uncle granted Plaintiff a 30 foot wide access easement across the southern end of his property. When Plaintiff constructed a house on her parcel, she installed a driveway across the northern end of her uncle's parcel, rather than on the platted easement across the southern end. Plaintiff's uncle later subdivided his parcel into northern and southern halves. After the subdivision, Plaintiff's driveway was on the northern parcel, and Plaintiff's platted easement was on the southern parcel. A home was later constructed on the southern parcel which blocked 20 feet of Plaintiff's platted easement. Plaintiff's cousin inherited the northern parcel and sold it to Defendant. During the course of the sale, Defendant determined that Plaintiff had no rights in the driveway across the northern parcel and informed Plaintiff that her driveway would be moved to the southern parcel within the platted easement. Defendant removed the driveway and installed a gravel driveway on the remaining 10 feet of Plaintiff's platted easement. Plaintiff filed suit and sought a judgment declaring that she had an easement by necessity or implication over the northern parcel. The trial court held that Plaintiff did not have any rights in the northern parcel. On appeal, the Court of Civil Appeals affirmed, holding that Plaintiff could not establish an easement by necessity or implication. In order to establish an easement by necessity, Plaintiff had to prove that the easement was genuinely necessary for access to the land. The evidence simply established that the easement across the northern parcel was more convenient than the platted easement across the southern parcel. Mere inconvenience, however, is not sufficient grounds to create an easement by necessity. Plaintiff's claim for an access easement across the northern parcel by implication failed because the driveway was not installed until after Plaintiff purchased her adjacent parcel. An easement by implication can only arise when the use was in existence at the time of the grant of the property.
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ALABAMA COURT OF CIVIL APPEALS

Eaton v. Waldrop, No. 2081095. Plaintiff filed a Complaint alleging that Defendant fraudulently induced Plaintiff to deed certain property to Defendant and Plaintiff's mother and that Defendant subsequently fraudulently induced Plaintiff's mother to transfer her interest in the property to Defendant. The Complaint sought rescission of the deed. Before trial, the trial court struck Plaintiff's request for a jury. At the end of the bench trial, Defendant moved for judgment as a matter of law, arguing that Plaintiff had failed to prove that Defendant had made a representation "with intent to deceive." The trial court granted the motion and entered a judgment on partial findings against Plaintiff and the estate. Plaintiff appealed, and the Court of Appeals reversed. The appellate court held the intent to deceive is not a necessary element of fraud in Alabama; any false representation, even if made innocently or by mistake, operates as a legal fraud. Here, Plaintiff presented evidence that he never would have executed the deed transferring the property jointly to his mother and Defendant, with rights of survivorship, had Defendant not falsely represented that he and Plaintiff's mother were married. However the appellate court did not find any error in the trial court's denial of Plaintiff's jury request as there is no right to a trial by jury in an action seeking to set aside a deed.
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Drees v. Turner, No. 2080742. Plaintiff brought an action against Defendants relating to a prior, unrelated judicial proceeding and alleging claims of invasion of privacy, abuse of process, false light, and the tort of outrage. Defendants filed motions to dismiss, which the trial court granted based on the doctrine of judicial immunity and for failure to state a claim upon which relief could be granted. The trial court dismissed the action. Plaintiff appealed the dismissal to the Alabama Court of Civil Appeals. The Court concluded that the trial court had impermissibly converted the defendants' motions to dismiss to motions for summary judgment by considering matters outside the pleadings. The Court held that the trial court should have given the parties an opportunity to submit evidence outside the pleadings. The Court reversed the dismissal and remanded the cause for further proceedings consistent with the opinion. On remand, the trial court entered a judgment dismissing the action and explaining that while the trial court reviewed materials outside of the pleadings, it did not base its initial decision to dismiss on these materials. Plaintiff appealed the second dismissal to the Alabama Court of Civil Appeals. Plaintiff argued that the trial court erred in failing to follow the Court's prior opinion. The Court found that the prior ruling did not prevent the trial court from reentering a judgment dismissing the case because the trial court ruled on the motion without considering any materials outside of the pleadings. Plaintiff also argued that the trial court erred in dismissing the action. The Court found that Plaintiff failed to present any sound reasons for holding the trial court in error.
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McLeod v. White, No. 2080566. Dorothy McLeod and Carolyn Charley are sisters who inherited a parcel of land, along with a third sister. The taxes on the land were paid by the three sister and her husband, David White. In 2003, the property was sold by the state for taxes. White successfully bid on the property at a tax auction—in his name only—and he received a certificate of sale from the probate court. The two sisters first learned of the tax sale when they attempted to sell the property several years later. The sisters filed a Complaint asserting, among other things, a right to redeem the property under the Alabama Code, and they requested that the court calculate the amount they owed to White to redeem the property under the pertinent statutes. After a trial, the court entered a judgment in favor of White, and the sisters appealed. In opposition to the appeal, White argued that the Sisters had failed to comply with the procedural requirements of Ala. Code § 40-10-83, because they included their request for the court to determine the amount owed to redeem the property in a pleading, rather than in a separate motion. On appeal, the Alabama Court of Civil Appeals noted that motions and pleadings are considered according to their substance and not their labels, and that a court may treat a pleading as a motion so long as no substantial prejudice will result to opposing parties. The Court explained that the sisters had complied with the statute by including a request that the court calculate the amount they owed to White in their Complaint and noted that White did not contend that he was prejudiced by their making that request in the Complaint instead of in a separate motion. Accordingly, the Court held that the sisters were entitled to redeem the property and reversed the judgment of the trial court.
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Strange v. Davis, No. 2081065. Plaintiff orally agreed to purchase a house from Defendant for \$35,000. Plaintiff made a \$4,000 down-payment while Defendant personally financed the balance (due to Plaintiff's bad credit) and agreed to procure the paperwork evincing the sale from his attorney. After Defendant's repeated failure to obtain the paperwork, Plaintiff concluded that Defendant never intended to do so. She therefore vacated the house, ceased making monthly payments, informed Defendant that she no longer intended to purchase the house, and demanded return of her down-payment. Defendant refused to return Plaintiff's down payment. Plaintiff then sued Defendant for breach of contract, fraud, harassment, and wrongful eviction. Defendant moved for a summary judgment on all Plaintiff's claims. The trial court granted Defendant's motion, and Plaintiff appealed. The Court of Civil Appeals affirmed in part and reversed in part. First, the appellate court reversed the judgment on the breach of contract claim, holding that (a) a fair-minded person in the exercise of impartial judgment could determine that Plaintiff had done nothing to prevent the completion and delivery of the paperwork, and (b) there existed a genuine issue of material fact as to whether Defendant initially breached the contract by failing to procure the paperwork. Second, the appellate court reversed the fraud judgment, finding evidence that Defendant always intended to maintain the contract as an oral agreement so that he could claim the parties had agreed only to a lease-purchase arrangement. Third, the court reversed the judgment on the unlawful eviction claim because the trial court's conclusion that Plaintiff had filed a sham affidavit to create an issue of material fact was unfounded. However, the appellate court affirmed the trial court's judgment on the harassment claim, because Plaintiff had not introduced any evidence indicating that Defendant committed actionable conduct in attempting to collect a monthly payment.
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