

IN THIS ISSUE
DECISIONS ISSUED ON JUNE 25, 2010

SUPREME COURT OF ALABAMA

Phillips v. Seward, No. 1081226 [*Jury Instructions: A proffered jury instruction regarding contributory negligence provides grounds for a new trial where a defendant failed to present substantial evidence at trial that the plaintiff was contributorily negligent.*] (Stuart, J., 4-3).

Kennedy v. Boles Investment, Inc., et al., No. 1080607 [*Injunctions: A final judgment dissolves all preliminary injunctions entered in a case that are inconsistent with the final judgment.*] (Smith, J., 9-0).

Russell v. State of Alabama, No. 1080426 [*Eminent Domain: The dismissal of a condemnation action for lack of jurisdiction in trial court does not affect the trial court's jurisdiction to entertain a motion for litigation expenses pursuant to Ala. Code § 18-1A-232(a).*] (Shaw, J., 5-0).

ALABAMA COURT OF CIVIL APPEALS

Brewster v. Sottera, LLC, No. 2090217 [*Quiet Title: Evidence that property was once owned by the ancestors of the claimant was insufficient to support claim to quiet title where claimant failed to introduce evidence that the property was ever transferred or descended to him.*] (Thompson, P.J., 5-0).

Sacred Heart Health System, Inc. v. Infirmary Health System, No. 2090239 [*Certificate of Need: Medical office building constructed to house an ambulatory surgery center, diagnostic equipment, rehabilitation services, and laboratory did not qualify for physician's office exemption to certificate of need ("CON") rules.*] (Thomas, J., 1-2-2).

Ft. James Holding Company, Inc. d/b/a Georgia-Pacific v. Morgan, No. 2090219 [*Final Judgment: A final judgment must conclusively determine the issues before the court and declare the rights of the parties; therefore, a judgment that does not address the issue of damages is a non-final judgment.*] (Thomas, J., 3-1).

Albright v. Poe, No. 2090154 [*Final Judgment: For purposes of jurisdiction for an appeal, a judgment must conclusively determine the issues before the court and declare the rights of the parties involved to be a final judgment.*] (Thomas, J., 5-0).

McKnight v. Way, No. 2090508 [*Wills and Estates: Provision in will restricting former husband from ever having "possession" or "control" of items "belonging" to children did not restrict the former husband from receiving property inherited by the children, but rather only from being appointed as a conservator or trustee for the children.*] (Bryan, J., 4-0-1).

Blount County Commission v. Sherrell, No. 2090266 [*State Employees: A deputy sheriff is the legal alter-ego of the county sheriff and is exempt from the state's merit system.*] (Thompson, P.J., 4-0-1).

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Phillips v. Seward, No. 1081226. Plaintiff Mary Nell Phillips sued Defendants Travis Seward and his employer, Heartland Express, Inc., alleging negligence after she was injured in a rear-end collision. A jury returned a verdict in favor of the Defendants. Plaintiff appealed. On appeal, Plaintiff argued: (1) that the trial court erred in failing to enter judgment as a matter of law in her favor on the issue of negligence; and (2) that the trial court erred in failing to grant a new trial because a proffered jury instruction on contributory negligence was erroneous and prejudicial. The Alabama Supreme Court found that the trial court did not err in denying Plaintiff's motion for judgment as a matter of law because Defendants presented evidence from which the jury reasonably could infer that Seward's actions leading up to the accident (i.e., traveling behind plaintiff with the expectation that she would not stop abruptly leaving Defendant with no time to brake) were reasonable. Nevertheless, the Court found that the trial court erred in denying Plaintiff's motion for a new trial because a contributory negligence jury instruction was erroneous and prejudicial as Defendants did not present substantial evidence that Plaintiff's actions in stopping, then moving forward and then stopping again while attempting to merge into heavy traffic were contributorily negligent. Thus, the Court reversed and remanded the case for a new trial.

[Click here for Opinion](#)

Kennedy v. Boles Investment, Inc., et al., No. 1080607. A final judgment was entered in this foreclosure action in favor of the defendants. The Supreme Court affirmed the judgment. The plaintiff petitioned the Supreme Court for a rehearing, arguing that the Supreme Court erroneously affirmed the final judgment because it overlooked an injunction issued earlier in the case. The Supreme Court denied the application for rehearing and noted that the final judgment dissolved the injunction on which the plaintiff's argument rested.

[Click here for Opinion](#)

Russell v. State of Alabama, No. 1080426. The State of Alabama filed a condemnation action on behalf of the City of Auburn in the Lee County Probate Court. The probate court entered an order of condemnation awarding Wayne Russell \$470,000 for the taking of his land. Russell appealed to the Lee County Circuit Court for a trial *de novo*. On Russell's motion, the trial court dismissed the case because two necessary parties had not been joined at the probate court level; a defect that rendered the probate court's order void and precluded the trial court from having jurisdiction to hear the case *de novo*. Thereafter, Russell filed a motion with the trial court seeking reimbursement for his litigation expenses. The trial court denied Russell's motion, citing its lack of jurisdiction to hear the case. On appeal, the Alabama Supreme Court noted that § 18-1A-232(a) of the Alabama Code requires the plaintiff in an eminent-domain action to reimburse the defendant's litigation expenses if the action is wholly or partially dismissed for any reason. The Court held that the jurisdictional defect that caused the trial court to dismiss the action (without prejudice) did not affect the trial court's jurisdiction to hear the motion for litigation expenses. Accordingly, the Court reversed the trial court's order denying Russell's motion and remanded the case.

[Click here for Opinion](#)

ALABAMA COURT OF CIVIL APPEALS

Brewster v. Sottera, LLC, No. 2090217. Larry Brewster filed suit against Sottera, LLC seeking to quiet title to five parcels of property in St. Clair County. Brewster testified that he was a descendant of the family that once owned the parcels, but he introduced no evidence demonstrating that title to the parcels descended to him. At trial, Brewster testified that he was not claiming title to one of the parcels, and Sottera acknowledged that it was not challenging Brewster's title to another of the parcels, thus leaving title to only three parcels in dispute. Sottera offered evidence tending to show peaceable possession of two of the disputed parcels and also introduced deeds conveying each disputed parcel to Sottera. The trial court found that Brewster was not in peaceable possession and therefore could not maintain an action to quiet title. The trial court further found that Sottera was in peaceable possession of the parcels and had proven superior title; therefore, the trial court quieted title to the five parcels in Sottera. On appeal, Brewster argued that he had constructive possession, and thus peaceable possession, of the parcels because he had title to them. The Court disagreed, finding that Brewster failed to introduce any evidence that any of the parcels descended to him. The Court found the evidence introduced by Sottera sufficient to demonstrate peaceable possession of the three disputed parcels and therefore affirmed the trial court's judgment quieting title to those parcels and the one that Brewster did not claim in Sottera. The Court reversed the trial court's judgment insofar as it quieted title in the parcel that Sottera did not claim.

[Click here for Opinion](#)

Sacred Heart Health System, Inc. v. Infirmary Health System, No. 2090239. Sacred Heart Health System, Inc. ("Sacred Heart, Inc.") serves as the owner of a physician group known as Sacred Heart Medical Group ("SHMG"), some members of which practice in Baldwin County. Sacred Heart developed a medical office building ("MOB") in Baldwin County to house an ambulatory surgery center, medical-office suites for SHMG and non-SHMG physicians, a diagnostic center, a rehabilitation center, and a laboratory. South Baldwin Regional Medical Center ("South Baldwin") filed a petition for a declaratory ruling with the State Health Planning and Development Agency ("SHPDA"), requesting that it declare that Sacred Heart's plans to develop the MOB required a CON. Infirmary Health System ("IHS") intervened in support of that petition. After the petition was denied by operation of law, South Baldwin and IHS (collectively, the "Opponents") filed a petition for judicial review in the Montgomery County Circuit Court. The Opponents requested that the trial court determine that a CON was required for the operation of the MOB and that the trial court enjoined Sacred Heart from operating the MOB until it obtained one. The trial court held that although a CON is required for "new institutional health services" provided at "health care facilities" the MOB fell under the "physician's office exemption" contained in Ala. Code § 22-21-260(6), which provides that "... the term health care facility shall not include the offices of private physicians..." However, the trial court found that adding any additional physicians or providing services beyond those then offered at SHMG's Baldwin County office would require a CON. On appeal to the Alabama Court of Civil Appeals, the Court held that the MOB did not fall under the physician's office exemption. The Court reasoned that the scope of the project extended beyond the expansion of SHMG physicians' existing offices and was intended to house new health services such as ambulatory surgery, rehabilitative, diagnostic, and laboratory services. The Court therefore reversed the trial court's judgment and granted an injunction preventing Sacred Heart from operating the MOB until it obtained a CON to do so.

[Click here for Opinion](#)

Ft. James Holding Company, Inc. d/b/a Georgia-Pacific v. Morgan, No. 2090219. The dispute underlying this appeal involves a claim for workers' compensation benefits. In a previous appeal, the Court of Civil Appeals remanded the case so that the trial court could determine whether Georgia-Pacific was required to pay Morgan's past medical expenses for treatment from unauthorized physicians. On remand, the trial court determined that Georgia-Pacific was required to pay the expenses for medical treatment from certain physicians. The judgment, however, did not address the amount of past medical expenses Georgia-Pacific was required to pay. Georgia-Pacific appealed. Addressing the issue of jurisdiction *ex mero motu*, the Court of Civil Appeals noted that a final judgment must conclusively determine the issues before the court and declare the rights of the parties. Because damages are an element of a claim to vindicate a legal right, a judgment is not final if the issue of damages is not addressed. Thus, because the trial court left the issue of damages unresolved, the Court of Civil Appeals dismissed Georgia-Pacific's appeal as having been taken from a non-final judgment.

[Click here for Opinion](#)

Albright v. Poe, No. 2090154. Marsha Poe instituted a sale-for-division action against her ex-husband, Bruce Albright, alleging that a piece of property jointly owned could not be equitably divided. Albright filed counterclaims against Poe for breach of contract, promissory estoppels, and adverse possession, alleging that the divorce settlement with Poe determined the issue of the disputed ownership of the property. Poe moved to dismiss the counterclaims. The trial court granted Poe's motion, and Albright appealed that order. Addressing the issue of jurisdiction *ex mero motu*, the Court of Civil Appeals noted that, generally, an appeal only may be taken from a final judgment. To be a final judgment, an order must conclusively determine the issues before the court and declare the rights of the parties. In the present case, the trial court's order on Poe's motion to dismiss was not a final judgment as it resolved only Albright's counterclaims. Therefore, the Court dismissed the appeal as having been taken from a non-final judgment.

[Click here for Opinion](#)

McKnight v. Way, No. 2090508. Item Two of Linda McKnight's will left all property to her three children, Drew, William, and Alex. Item Five of her will provided that neither of her former husbands could "ever have possession or control of any items or funds from life insurance, IRAs, this will or other method of acquisition belonging to [her] children and acquired by, through or under [Linda], [her] sister, or [her] parents." Four months after Linda's death, her son, William, died. William's father and Linda's former husband, Jack, petitioned the probate court to have William's conservator transfer the property in William's conservatorship estate to Jack on the ground that it had vested in Jack by virtue of the statute governing intestate succession. William's conservator petitioned the probate court to determine that the property should be transferred to Linda's estate so that it could be divided between the other two children. Following a hearing, the probate court entered a judgment determining that Jack was entitled to the property in William's conservatorship estate. The probate court's judgment was affirmed on appeal to the trial court. The conservator appealed arguing that the language in Item Five constituted a valid and enforceable restriction on the alienation of Linda's property and that the will clearly showed an intent for the gift to her children to be contingent upon their dying under circumstances in which property received from Linda would not pass to Jack. The Court of Civil Appeals affirmed the judgment, finding that Linda intended to make a gift of an absolute fee interest in her property to her children, and that the restriction in Item Five prohibiting Jack from having "possession" or "control" of property "belonging" to the children, was only intended to prevent him from being appointed as a conservator or trustee for the children.

[Click here for Opinion](#)

Blount County Commission v. Sherrell, No. 2090266. Deputy Sheriff Clinton Sherrell retired from the Blount County Sheriff's Department in 2002 and sought to be paid for 480 hours of unused sick leave that he had accrued during the course of his career. Section 36-26-36 of the Alabama Code provides that state employees who acquire sick leave pursuant to the state merit system are entitled to be paid for 50% of any accumulated leave upon their retirement. The Blount County Commission contended that Sherrell was not entitled to be paid for his accumulated sick leave because it considered deputy sheriffs to be exempt from the state's merit system. The trial court nonetheless ordered the Commission to pay Sherrell for his unused sick leave. On the Commission's appeal, the Alabama Court of Civil Appeals noted that as an elected official, a county sheriff is exempt from the state merit system and agreed with the Commission that a deputy sheriff is the sheriff's legal alter-ego and also exempt from the merit system. As such, a deputy sheriff is not entitled to be paid for his unused sick leave under the statute. Reversed and remanded.

[Click here for Opinion](#)

CLICK [HERE](#) TO VISIT THE APPELLATE WEBSITE

**APPELLATE
 FOCUS TEAM
 ATTORNEYS**

ED R. HADEN—CHAIR

[Profile](#) [Email](#)

(205) 226-8795

CHRISTOPHER L. YEILDING—

EDITOR

[Profile](#) [Email](#)

(205) 226-8728

CHRISTOPHER L.

ANULEWICZ

[Profile](#) [Email](#)

(404) 962-3562

MICHAEL J. BOWERS

[Profile](#) [Email](#)

(334) 962-3535

DAVID R. BOYD

[Profile](#) [Email](#)

(334) 269-3132 Mont.

(205) 226-3485 B'ham

MATTHEW F. CARROLL

[Profile](#) [Email](#)

(205) 226-3451

THOMAS L. CASEY, III

[Profile](#) [Email](#)

(205) 226-3480

GREGORY C. COOK

[Profile](#) [Email](#)

(205) 226-3426

R. PEPPER CRUTCHER, JR.

[Profile](#) [Email](#)

(601) 965-8158

MICHAEL L. EDWARDS

[Profile](#) [Email](#)

(205) 226-3401

P. STEPHEN GIDIERE, III

[Profile](#) [Email](#)

(205) 226-8735

DANIEL E. HARRELL

[Profile](#) [Email](#)

(205) 226-3489

LEIGH ANNE HODGE

[Profile](#) [Email](#)

(205) 226-8724

W. JOSEPH MCCORKLE, JR.

[Profile](#) [Email](#)

(334) 269-3134

KELLY F. PATE

[Profile](#) [Email](#)

(334) 269-3130

JOHN D. PICKERING

[Profile](#) [Email](#)

(205) 226-8752

DORMAN WALKER

[Profile](#) [Email](#)

(334) 269-3138

CONTRIBUTORS

CONRAD ANDERSON IV

DAVID R. BURKHOLDER

LOUIS M. CALLIGAS

MARCUS R. CHATTERTON

JENNIFER HOOVER CLARK

ROBIN A. FRANCO

CHRISTOPHER F. HEINSS

TYRELL F. JORDAN

KRIS KAVANAUGH

DAVID A. LESTER

NEAH L. MITCHELL

JOSEPH SEAWELL MOORE

STEVEN R. PARKER

LINDSAY S. REESE

J. PATRICK RUNGE

J. HOUSTON SMITH, III

PATRICK H. STRONG

BIRMINGHAM OFFICE

1901 SIXTH AVENUE NORTH

SUITE 1500

BIRMINGHAM, AL 35203

(205) 251-8100

MONTGOMERY OFFICE

105 TALLAPOOSA STREET

SUITE 200

MONTGOMERY, AL 36104

(334) 834-6500

ATLANTA OFFICE

30 IVAN ALLEN, JR. BLVD., NW

SUITE 700

ATLANTA, GA 30308

(404) 261-6020

GULFPORT OFFICE

1310 TWENTY FIFTH AVENUE

GULFPORT, MS 39501

(228) 864-9900

JACKSON OFFICE

401 EAST CAPITOL STREET

SUITE 200

JACKSON, MS 39201

(601) 961-9900

D.C. OFFICE

801 PENNSYLVANIA AVE. NW

SUITE 325

WASHINGTON, D.C. 20004

(202) 347-6000

BALCH & BINGHAM LLP

[HOME PAGE](#)

NOTE: No representation is made that the quality of legal services performed is greater than the quality of legal services performed by other lawyers. The information contained in this document is provided for informational purposes only and is not intended to provide legal advice to any person or entity and should not be used as a substitute for the advice of a qualified lawyer. When using this document, be aware that the information may be out of date and/or may not apply or be appropriate to your particular set of circumstances or your judicial jurisdiction. As legal advice must be tailored to the specific circumstances of each case and the law is constantly changing, you should not rely solely on the information set forth in this document. Anyone with a legal question or legal problem should always consult with and seek the advice of a qualified lawyer. Balch & Bingham LLP does not make any representations, warranties, claims, promises or guarantees about the completeness, accuracy or adequacy of the information in this document. The information in this document does not necessarily represent the opinion of Balch & Bingham LLP, any of its lawyers, or any clients of the firm.