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CASE SUMMARIES

SUPREME COURT OF ALABAMA

Bernal, Inc. v. Kessler-Greystone, LLC. No. 1091121. Bernal, Inc. leased space in a development owned by Taylor Properties LLC, in which Bernals maintained a Cuban restaurant. Taylor had a separate agreement with Brentwood Properties, Inc. whereby Brentwood managed and operated the development on Taylor's behalf. That agreement specified that Brentwood was to take all necessary action to enforce tenant leases, but also specified that the agreement would terminate in August 2007, or upon the sale of the development. Taylor sold the development to Kessler-Greystone LLC in February 2007. In February 2008, Brentwood sued Bernals for breach of contract, alleging that Bernals failed to pay rent due, and seeking damages under an acceleration clause of the lease agreement between Bernals and Taylor. After Bernals raised Brentwood's standing to file the lawsuit, the trial court allowed Kessler-Greystone to be substituted as the true plaintiff. The trial court ultimately granted summary judgment in favor of Kessler-Greystone on its own claims, and on counterclaims asserted by Bernals. Bernals appealed to the Alabama Supreme Court, arguing that the trial court never acquired subject matter jurisdiction because Brentwood lacked standing to file the action. On appeal, the Court explained that when a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction, and that defect cannot be cured by amending the complaint to add a party having standing. The Court further explained that all orders and judgments entered in such a case are void. Brentwood was not a party to the lease between Bernals and Taylor that formed the basis of the breach of contract claim, and even if Brentwood's management agreement could confer standing for it to sue under the lease agreement, the management agreement had expired before Brentwood filed the suit. Accordingly, the Court held that Brentwood lacked standing to file the lawsuit, declared that the trial court's subsequent judgment was void, and dismissed the appeal.

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Ex Parte L & D Transportation. No. 1090467. In March 2003, Jones was involved in a collision with a vehicle driven by Berry. In 2004, Jones sued Berry and his employer, L&D Transportation, (together, "Defendants"), alleging that Berry was acting in scope of his employment at the time of the accident. Jones's complaint demanded a trial by jury. Defendants answered the complaint and also demanded a jury. The case was dismissed twice, but was reinstated for a second time in June 2007. The trial court's reinstatement order stated that Jones's jury demand was stricken. The case action summary noted this action and further stated that a bench/non-jury trial had been requested. In July 2009, Jones filed a motion to set the case for trial. In September, the case was set for a bench trial in December. In November, the Defendants filed a motion to reset the case for a jury trial. The trial court denied the motion, and the Defendants petitioned for a writ of mandamus. The Alabama Supreme Court reversed, first noting that Defendants had timely demanded a jury trial under Ala. R. Civ. P. 38(b). The Court then explained that in determining whether Defendants had waived their request, the Court must consider any conduct or acquiescence inconsistent with an intent to insist upon jury trial, such as participating in a non-jury trial without objecting or assenting to a non-jury trial in another proceeding that litigated the claim. Here, Jones did not point to any conduct of the Defendants inconsistent with their intent to insist upon a jury: their failure to act in June 2007 to secure a jury trial, before their jury demand was actually refused by the trial in September 2009, was irrelevant. Therefore, the trial court exceeded its discretion in denying Defendants' motion to reset the case for a jury trial.

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Ex parte Littrell. No. 1100344. During the course of his employment, Petitioner was involved in an automobile accident with a minor. Thereafter, Petitioner sued the minor's parent and RLI Insurance Company ("RLI"), the underinsured-motorist insurer for Petitioner's employer. After Petitioner filed suit, RLI elected to "opt out" of the case and withdrew from active participation pursuant to the procedures provided by *Lowe v. Nationwide Insurance Co.*, 576 So. 2d 160 (Ala. 1991). RLI agreed that it would be bound by any judgment against the parent in excess of the parent's policy limits to the insurance coverage limits available to Petitioner under the underinsured-motorist policy. However, an attorney (the "RLI attorney") later entered an appearance on behalf of RLI and actively participated in the discovery stages of the litigation. As trial approached, the RLI attorney sought to withdraw as counsel of record for RLI and appear as co-counsel for the parent. The trial court rejected Petitioner's opposition to the RLI attorney's appearing on behalf of the parent, and Petitioner petitioned the Supreme Court of Alabama for a writ of mandamus directing the trial court to reverse its decision. Petitioner argued that the RLI attorney's appearance constituted a procedural move designed to allow RLI to actively participate in the litigation, including at trial, yet still preventing Petitioner from revealing the identity of RLI. The Alabama Supreme Court initially noted that Petitioner waived his objections to RLI's participation in discovery by waiting until his petition for a writ of mandamus to assert such an objection. However, the Court did agree with Petitioner that, because the parent had been represented by competent and experienced counsel throughout the litigation, requiring RLI to be bound by its previous decision to "opt out" of trial would not place it in an unduly precarious situation. The Court's decision was, it said, bolstered by the fact that the case involved underinsured coverage, as opposed to a completely uninsured motorist. The Court directed the trial court to vacate its order denying petitioner's motion to require RLI to be bound by its decision to "opt out" of participation in the trial and to prevent any appearance by the RLI attorney. In a dissent, Justice Murdock stated that he did not feel as though petitioner had any sort of standing in which to object to the defendant-parent's choice regarding her legal representation.

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ALABAMA COURT OF CIVIL APPEALS

Brunson v. Alabama State Board of Medical Examiners. No. 2090751. Defendant Alabama State Board of Medical Examiners issued an administrative order directing Dr. Brunson to appear at a hearing and show cause why his registration permitting him to dispense controlled substances should not be revoked. After a hearing, the Board rendered an order on February 17, 2010, revoking Dr. Brunson's Controlled Substances Certificate. On May 17, 2010, Dr. Brunson appealed from that revocation order. The Alabama Court of Civil Appeals held that Dr. Brunson's appeal was not timely because Dr. Brunson first failed to file a notice of appeal with the Board within thirty days after the receipt of the Board's decision, and then missed a second deadline by failing to file an appeal with the Court within thirty days after filing the notice of appeal with the Board. The Court of Civil Appeals held that time periods set for appeals from decisions of administrative agencies are statutory and must be strictly observed. Because Dr. Brunson missed the statutorily prescribed deadlines, the Court dismissed the appeal.

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Ex parte El Reposo Nursing Home Group, Inc. No. 2100113. The employee filed an action against her employer seeking workers' compensation benefits for alleged injuries sustained when she fell while assisting a patient during the course of her employment. The trial court held a hearing on the issue of compensability and entered an order determining that Plaintiff's injuries were compensable under the Alabama Workers' Compensation Act. Thereafter, on two separate occasions, Defendant provided two different authorized treating physicians to examine Plaintiff. The physicians determined that Plaintiff would benefit from pain management treatment, but that such treatment should be covered by private insurance because Plaintiff's symptoms existed prior to her work-related injury. Based on the recommendations of the physicians, Defendant refused to provide pain management treatment for Plaintiff. Based on Defendant's refusal to provide the treatment, the trial court granted Plaintiff's motion to hold Defendant in contempt. Defendant filed a petition for writ of mandamus arguing that trial court's contempt order had improperly overridden the physician's determination that Plaintiff's injuries existed prior to her work-related injury. In denying the Defendant's petition, the Alabama Court of Civil Appeals determined that, because the trial court's compensability order failed to comply with Ala. Code § 25-5-88, which requires a trial court to make detailed findings of fact and conclusions of law, it was unable at this stage of the proceedings to determine the parameters of the trial court's compensability determination. The Court, however, ordered the trial court to amend its compensability order to comply with Ala. Code § 25-5-88 and its recent decision in *Ex parte Cowabunga, Inc.*, 2011 LEXIS 20 (Ala. Civ. App. 2011). The Court noted that Defendant could again submit its petition after the entry of the trial court's amended compensability order.

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Oden Music, Inc. v. First Baptist Church of East Gadsden. No. 2091024. Plaintiff filed a complaint against Defendants alleging breach of contract and fraud. Defendants moved to compel arbitration. Plaintiff opposed arbitration contending that the arbitration agreement had been forged. The trial court denied Defendants' motion to compel arbitration. Defendants appealed to the Alabama Court of Civil Appeals arguing that Plaintiff failed to meet its burden of proving that the arbitration agreement was not signed by Plaintiff's representative. The Court found that Plaintiff presented testimony of Plaintiff's representative that he did not sign the agreement and presented evidence indicating that other documents connected to the agreement had been forged. Thus, the Court affirmed the trial court's denial of the motion, concluding that the Plaintiff met its burden of proving that it did not sign the arbitration agreement.

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Stone v. Parish. No. 2100204. During a hearing in the probate court on the petition to probate the will of Witcher, Stone, one of Witcher's children, and some of her siblings argued that Witcher's will was invalid. Over the objections of Stone and her siblings, the probate court issued letters of administration and admitted the will to probate. After forty-two days later, Stone filed a will contest in the circuit court. The estate moved to dismiss Stone's contest, arguing that Stone had already contested the validity of the will in the probate court and therefore her only remedy was to appeal the probate court's order to the circuit court within forty-two days of the order admitting the estate to probate. The estate argued that because more than forty-two days had passed since the probate court admitted the will to probate Stone's action should be dismissed as untimely. Stone argued, however, that the proceeding in the probate court was not a will contest and that she was entitled under Ala. Code § 43-8-199 to file a will contest in the circuit court within six months after probate. The circuit court dismissed Stone's action. Stone appealed, arguing that no will contest had been filed "in writing" in the probate court pursuant to Ala. Code § 43-8-190 and, thus, the circuit court had jurisdiction over the will contest pursuant to Ala. Code § 43-8-199. The Alabama Court of Civil Appeals reversed, holding that because the statutory requirements for a will contest must be strictly adhered to and because there was no specific argument or supporting evidence indicating that Stone has previously contested the will in the probate court under Ala. Code § 43-8-199, Stone was entitled to file her contest in the circuit court.

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Wilkinson v. Board of Dental Examiners of Alabama. No. 2100175. Wilkinson sued the Board of Dental Examiners of Alabama seeking compensation she claimed under her employment contract with the Board. The Board moved to dismiss, asserting that the trial court lacked subject-matter jurisdiction because the Board was a State agency entitled to sovereign immunity. The trial court agreed with the Board and dismissed Wilkinson's action. The Alabama Court of Civil Appeals reversed, noting that the main, but not sole, focus of the immunity determination is whether a judgment against the alleged State agency would result in liability for the State that must be paid out of the State treasury. The Court noted that the Board did not receive any State funds. Instead, the money collected by the Board is statutorily appropriated to the Board pursuant to Ala. Code § 34-9-41. Thus, the funds are never deposited into the State treasury. The Court also noted that there is no oversight of the Board by the State, nor does the statute that created the Board characterize it as an agency of the State. Therefore, the Court held, because the Board is a completely self-supporting body not controlled by the State, it is not a State agency entitled to sovereign immunity.

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Ex parte Mobile County Board of School Commissioners. No. 2100183. The Mobile County Board of School Commissioners (the "Board") terminated the employment of Long under the Fair Dismissal Act ("FDA"). Long contested the Board's decision and a hearing officer overturned the Board's decision to terminate Long. The Court of Civil Appeals reversed the hearing officer's decision and remanded the case to the hearing officer (the "First Appeal"). On remand, the Board and Long disagreed as to whether the hearing officer could hold an evidentiary hearing. The hearing officer determined that the Court in the First Appeal had intended for there to be an evidentiary hearing on remand. Consequently, the Board appealed seeking the Court of Civil Appeals to direct the hearing officer to issue a decision in the Board's favor without an evidentiary hearing (the "Second Appeal"). In the Second Appeal, the Court of Civil Appeals clarified that it had directed the hearing officer to issue a decision in favor of the Board without holding an evidentiary hearing. Long then petitioned the Alabama Supreme Court for a writ of certiorari. The Supreme Court denied the writ, and the Court of Civil Appeals issued a certificate of judgment. Long filed a motion with the hearing officer seeking an order directing the Board to reinstate his pay retroactive to the date of Long's dismissal when his pay was cut off. The hearing officer issued an order affirming Long's dismissal and determining that Long's employment was wrongfully and prematurely discontinued and, therefore, Long was entitled to be paid by the Board for the period between the date of his dismissal and the date on which the Court of Civil Appeals issued its certificate of judgment in the Second Appeal. The Board then filed the current appeal seeking to vacate the hearing officer's order. The Court of Civil Appeals reversed the hearing officer's order, finding that the hearing officer lacked the authority under the FDA to award Long pay for the period between his dismissal and the certificate of judgment in the Second Appeal. The Court noted that the hearing officer had awarded pay to Long for a period of time after the Court had determined in the First Appeal that the Board was justified in dismissing Long. The Court held that after the First Appeal, the hearing officer's only remaining task was to enter a decision in favor of the Board.

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Brotherhoods Relief & Compensation Fund v. Raffety. No. 2090113. Plaintiff's employer found a loaded pistol on one of its locomotives. Plaintiff initially stated that he brought the pistol to work to display to coworkers, but later changed his story, claiming that his possession was inadvertent. After an investigation and hearing, the employer fired Plaintiff for violation of its firearm and dishonesty rules. Plaintiff presented a claim to the Brotherhood's Relief & Compensation Fund (the "Fund"), an association maintained for the benefit of workers affiliated with railroad unions, averring that his possession of the pistol was inadvertent. The Fund's constitution specified that a member may make a claim for benefits when he is relieved by his employer from the performance of his usual duties so long as the dismissal did not result from the employee's willful or intentional violations of the employer's rules. After a hearing, a Fund official denied Plaintiff's claims, determining that his actions constituted misrepresentation of facts and/or willful or intentional rule violations. Plaintiff appealed to the Fund's Board of Directors. The Board upheld the ruling, so Plaintiff initiated an action in circuit court, alleging breach of contract claims against the Fund and a separate entity. The trial court eventually entered a judgment against the Fund for \$20,160. The Fund appealed, asserting that the judgment amounted to an erroneous interference with its internal operations and an impermissible substitution of the trial court's interpretation of the contract for its own. The Court of Civil Appeals agreed. Voluntary associations have plenary power to interpret and administer their own rules and regulations; their decisions are presumed correct, and courts may not interpret and apply rules and regulations in a manner reserved to their governing bodies. The Court held that the transcript of the employer's investigative hearing provided a sufficient basis for a reasonable person to reach the Fund's conclusion concerning Plaintiff's intent. Further, only the Board's opinion was material since the Fund's constitution gave the Board sole discretion in determining an employee's intent. Because the trial court erred in substituting its judgment for the Board's, its decision was reversed.

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