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Ex parte Coble, No. 2091087 [*Waiver of Jury Trial: Where petitioner-tenant signed lease agreement with a conspicuous and broadly encompassing jury-waiver provision, trial court did not err in striking tenant's demand for a jury trial.*] (Per Curiam, 9-0-0).

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Ex parte Community Health Systems Professional Services Corporation, No. 1100523. The owners and operators of Trinity Medical Center planned to relocate the facility to the City of Irondale, but later reevaluated and decided to relocate to a site in the City of Birmingham. The City of Irondale sued Community Health Systems Professional Services Corporation ("CHSPSC"), one of the owners and operators of Trinity, and others and sought to depose CHSPSC's CEO. The trial court denied CHSPSC's motion for a protective order, ordering that the CEO's deposition be taken within 30 days of the order. CHSPSC moved the trial court to reconsider. The trial court denied that motion, but ordered Irondale to avoid undue burden or oppression in scheduling the deposition. CHSPSC petitioned for a writ of mandamus directing the trial court to grant its motion for protective order. Irondale argued that CHSPSC's mandamus petition was not timely because it had not filed its petition within the time period remaining for the deposition pursuant to the trial court's first order denying CHSPSC's motion for protective order. The Supreme Court disagreed, stating that the trial court, in its second order, had altered the time limit within which the deposition should be taken to a time that was not unduly burdensome or oppressive. The Court held that because CHSPSC had filed its petition within 42 days of the trial court's second order, its petition was timely. The Court, however, denied CHSPSC's mandamus petition, finding that CHSPSC did not demonstrate a clear legal right to a protective order.

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ALABAMA COURT OF CIVIL APPEALS

Mahoney v. Loma Alta Property Owners Association, Inc., No. 2100104. Loma Alta Property Owners Association, Inc. sued Carol Mahoney for failure to pay property owners association fees for her condominium unit. Carol Mahoney argued that the amount owed was offset by repairs Loma failed to make to the unit. After a trial, the district court entered judgment for Loma. Mahoney appealed to the circuit court, and amended her answer to assert that she did not owe any fees because her former husband owned the condominium, and therefore only he had a contractual obligation to pay fees. After a bench trial, the circuit court entered judgment in favor of Loma for compensatory damages and attorneys' fees. Mahoney appealed to the Alabama Court of Civil Appeals, which reversed the trial court judgment and held that Loma failed to prove that Mahoney was contractually bound to pay fees. On remand, the trial court vacated its judgment but denied Mahoney's claim for attorneys' fees under the Alabama Litigation Accountability Act ("ALAA"). Mahoney appealed this decision (the "Second Appeal"), and the Court of Civil Appeals found Mahoney was entitled to an attorneys' fees award because the record indicated that Loma knew Mr. Mahoney was the record owner of the property. Loma appealed the decision to the Alabama Supreme Court, which affirmed the Court of Civil Appeals (the "Supreme Court Appeal"). Following the Supreme Court Appeal, the trial court conducted a hearing to determine the attorneys' fees award. The trial court awarded Mahoney \$500, basing its decision upon: (1) the reasons set forth by the dissenters in the Supreme Court Appeal, (2) Loma's recent submissions, and (3) the attorneys' fees awarded by the Court of Civil Appeals during the Second Appeal. Mahoney then filed the current appeal, arguing that the trial court erred because it failed to make specific findings of fact stating the reasons for the fee award as required by the ALAA. The Court of Civil Appeals reversed the trial court, holding that none of the reasons set forth in its judgment were sufficient to meet the ALAA's specificity requirements.

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Hodges v. Hodges, No. 2090610. Plaintiff filed a petition in the probate court seeking admission of a purported will of decedent. Defendants filed a complaint contesting the will and filed a petition to remove the case to circuit court. The probate court entered an order admitting the will to probate, but later transferred the case to circuit court. Plaintiff moved to remand the case to probate court arguing that the circuit court could not have properly assumed jurisdiction because the complaint contesting the will was filed before any substantive action was taken on the petition to probate the will. The circuit court remanded the case to probate court. Defendants appealed. The Alabama Court of Civil Appeals, in reversing the circuit court's remand of the case, determined that the Defendants' complaint contesting the will and their petition for removal substantially indicated the Defendants' desire to contest the will and their desire to simultaneously invoke their right to have the circuit court adjudicate the contest of the will. As such, the Court determined that the probate court lost any authority to adjudicate the contest and was required to transfer the case without any further action on the validity of the will. Thus, the probate court's order admitting the will was void as the circuit court maintained exclusive jurisdiction to adjudicate the contest of the will.

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Cressman v. Alabama Board of Medical Examiners, No. 2090989. The Alabama Board of Medical Examiners revoked Dr. Cressman's Alabama Controlled Substances Certificate on June 21, 2010, following a hearing. On July 21, 2010, Dr. Cressman filed a notice of appeal with the Alabama Court of Civil Appeals. On December 10, 2010, the Court issued an opinion transferring Dr. Cressman's appeal to the Montgomery County Circuit Court. On May 6, 2011, on rehearing *ex mero motu*, the Alabama Court of Civil Appeals withdrew its previous opinion and substituted a new opinion, dismissing Dr. Cressman's appeal. The Court held that because Dr. Cressman did not timely file a notice of appeal with the Board, as required under the Alabama Administrative Procedure Act, he did not invoke the Court's jurisdiction. Justices Bryan and Thompson, concurring specially, warned that Ala. Code § 34-24-380(c), requiring appeals from Board decisions to be "filed ... and maintained in the Alabama Court of Civil Appeals," could be a trap for the unwary and urged the legislature to clarify the procedure.

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Ex parte Alabama State Personnel Board, No. 2100289. On August 19, 2010, Andrew Sutley filed a notice of appeal from the Alabama State Personnel Board's ("SPB") order upholding the decision of the Alabama Department of Public Safety ("DPS") to terminate Sutley's employment as a state trooper. Sutley's notice did not name the SPB as a party. On September 16, 2010, Sutley filed a "Petition for Judicial Review" in the Montgomery Circuit Court naming the DPS as the respondent. Sutley failed to name the SPB as a party. The DPS moved to dismiss the action, asserting that it was not the agency responsible for the ultimate decision to terminate Sutley's employment. Thereafter, Sutley moved to add the SPB as a respondent to his petition, and the trial court granted his motion. The SPB petitioned the Alabama Court of Civil Appeals for a writ of mandamus, asserting that the trial court exceeded its authority in ordering the SPB to be added as a respondent to Sutley's administrative appeal because the statutory time limitations set forth in the Alabama Administrative Procedure Act had expired prior to Sutley's motion. Alabama Code § 41-22-20(d) requires that a notice of appeal be filed within 30 days of receiving notice of an agency's final action and requires that a petition for judicial review be filed in the circuit court within 30 days of filing the notice of appeal. Section 41-22-20(h) requires the petition for judicial review to "name the agency as respondent." Sutley failed to name the SPB, the agency responsible for the decision for which he was seeking judicial review, as a party in his notice of appeal or petition for judicial review. Accordingly, Sutley failed to strictly comply with the statutory requirements for appeal and the Court ordered the trial court to vacate its order adding the SPB as a party.

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Jarrett v. Federal National Mortgage Association, No. 2090709. The Federal National Mortgage Association ("FNMA") filed an ejectment action against Jeffrey Jarrett following a foreclosure of the mortgage on his property. Jarrett never answered the complaint, and FNMA took a default judgment. The trial court summarily denied Jarrett's later attempts to set aside the default judgment. Jarrett argued through counsel that he suffered from a mental disability and that he was unable to manage his financial and legal affairs at the time that the action was filed. The trial court denied that motion, and Jarrett appealed. On review, the Alabama Court of Civil Appeals noted that courts have a great deal of discretion in deciding whether to grant a motion to set aside a default judgment. The Court explained that, despite that discretion, a trial court must at least consider three factors in deciding whether to set aside a default judgment: (1) whether the defendant has a meritorious defense to the case, (2) whether the plaintiff would be unfairly prejudiced if the default judgment is set aside, and (3) whether the default judgment was the result of the defendant's own culpable conduct. Because the trial court did not explain in its ruling whether it considered these factors, the Court of Civil Appeals reversed the judgment and remanded the case for further consideration.

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Ex parte Imerys USA, No. 2100174. Wilson, who was employed by Imerys USA, allegedly sustained a work-related injury during his employment. Wilson chose Dr. Jones as his orthopedist and received treatment. Wilson was later referred to another doctor, Dr. Downey, for pain management. Dr. Downey, in turn, referred Wilson to a pain clinic where he was treated by Dr. Ryder. When the pain treatment proved unavailing, Dr. Ryder requested authorization from Imerys's third-party administrator to refer Wilson to another orthopedist, Dr. Cordover, for further evaluation. The administrator denied authorization and scheduled Wilson for an appointment with Dr. Jones instead. When Wilson refused to attend, Imerys moved to compel him. Imerys also requested that the trial court order that it was not required to honor Dr. Ryder's referral. Wilson requested that the trial court deny Imerys's motion and authorize the referral. The trial court granted Wilson's request, holding that the Alabama Workers' Compensation Act ("AWCA") requires an employer to authorize referrals for reasonably necessary treatment made by authorized treating physicians. In response, Imerys petitioned for mandamus, arguing that it was not necessarily required to honor a referral made by a physician to whom the employee has been referred by the authorized treating physician. The Alabama Court of Civil Appeals agreed and ordered the trial court to set aside its order. The Court explained that, under the AWCA, a physician to whom an employee is referred by an authorized treating physician has implicit authority to control only the aspect of treatment for which the referral was made. Dr. Ryder was authorized only to direct Wilson's pain treatment; he was not thereby authorized to refer Wilson for an orthopedic evaluation.

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Ex parte Coble, No. 2091087. The petitioner-tenant appealed from the trial court's striking of his demand for a jury trial in his lawsuit against the defendant-landlord and the landlord's successor in interest. Because an order granting or denying a trial by jury is an interlocutory order, the Alabama Court of Civil Appeals treated the tenant's appeal as a petition for a writ of mandamus. The tenant first argued for reversal on the grounds that the Alabama Uniform Residential Landlord and Tenant Act, codified at Alabama Code §§ 35-9A-101 *et seq.* (1975) (the "Act"), prohibited a lease agreement from waiving the right to a jury trial because the Act states that "[a] rental agreement may not provide that the tenant ... agrees to the ... limitation of any liability of the landlord arising under the law ..." However, because the Court found that the defendants' legal obligations relating to liability would not be affected by holding a bench trial instead of a jury trial, the jury-waiver provision did not constitute a "limitation of liability" under the Act. Next, the tenant argued that the jury-waiver provision could not be enforced under the standard established by *Gaylor Dep't Stores of Ala., Inc. v. Stephens*, 404 So. 2d 586 (Ala. 1981). The Court of Civil Appeals disagreed with the tenant, finding that: (1) the jury-waiver provision at issue was typed in the normal print size of the lease agreement and could be found easily by the tenant, and thus the provision was typed "so as to call attention to the waiver"; (2) the bargaining power of the parties was not clearly swayed in favor of the defendants, as the tenant was a practicing bankruptcy attorney familiar with legal documents; and (3) the fact that the tenant initialed the bottom of the page in which the jury-waiver provision was contained (in a spot less than two inches above the initialed mark) showed the tenant "intelligently and knowingly" agreed to the jury-waiver. Finally, because the jury-waiver provision waived a jury trial "of any lawsuit based on statute[,] common law, and/or related to this Lease Contract," the Court found that its language was broadly encompassing, and thus all of the tenant's claims against the defendants were susceptible to the jury-waiver provision.

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