

IN THIS ISSUE

DECISIONS ISSUED JUNE 10, 2011

SUPREME COURT OF ALABAMA

Roberts v. Lanier, No. 1100045 [*Alabama Legal Services Liability Act: Where several of plaintiff's claims could not have been reasonably discovered within two years of the act giving rise to the claims, trial court erred in granting summary judgment for defendants.*] (Woodall, J., 5-0-0).

ALABAMA COURT OF CIVIL APPEALS

Dodd v. Semmes Development Co. LLC, No. 2090308 [*Rule 54(b) Certification: Trial court improperly certified partial summary judgment as final when it failed to adjudicate all disputes regarding property line.*] (Per Curiam, 4-0-1).

Superior Wall and Paver, LLC v. Gacek, No. 2090967 [*Damages: The proper measure of damages in a breach of contract case dealing with the improper installation of a driveway is the cost to repair the damage.*] (Bryan, J., 5-0-0).

Sustainable Forests, LLC v. Alabama Department of Revenue, No. 2091149 [*Recording Tax: The recording of deeds and assignments conveyed from a taxpayer to a limited liability company owned solely by the taxpayer is subject to the recording tax set forth in Alabama Code § 40-22-1 because the recording of those transactions are not specifically excluded from taxation.*] (Bryan, J. 5-0-0).

Townsend v. Hogan, No. 2100303 [*"Common fund" Doctrine: Attorney who moved the trial court to altar a settlement agreement to accommodate a reduced lien did not create additional common funds and was not entitled to additional contingency fees.*] (Per Curiam, 3-2-0).

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Roberts v. Lanier, No. 1100045. Barbara Roberts sued Steve Lanier, Lanier's firm, Rodney Loring Stallings, and Stallings' law firm, asserting claims relating to legal representation in certain criminal matters. Roberts and Lanier executed an employment agreement that allowed Lanier to retrieve \$50,000.00 from Roberts' bank accounts to pay for a "nonrefundable retainer." Lanier, a Georgia attorney, associated Stallings and his firm as local counsel. After her conviction, Roberts filed suit against the defendants. The trial court dismissed Roberts' request for declaratory judgment that Lanier misrepresented that he was qualified to represent her in Alabama. The trial court also granted defendants' motion for summary judgment on Roberts' claims that Lanier misrepresented that the agreement was valid and enforceable, that she would not be entitled to any refund of the retainer if Lanier's representation was terminated, and that Lanier took Roberts' funds for his personal use. The court also granted summary judgment for Stallings and his firm on Roberts' misappropriation of funds claims. On appeal, the Alabama Supreme Court determined that because Lanier provided legal services to Roberts and was allowed to do so based on his *pro hac vice* admission, Alabama's Legal Services Liability Act, Alabama Code §§ 6-5-570 *et seq.* (the "ALSLA"), applied. The Court noted Roberts' declaratory judgment claim hinged on her allegation that Lanier committed the unauthorized practice of law by not disclosing that he did not have an Alabama law license. However, because Roberts learned this fact in April 2006 yet waited until February 2009 to sue, her declaratory judgment action was barred by the ALSLA's two-year statute of limitations. The statute of limitations did not bar her remaining claims against the Lanier defendants, as they fell with the ALSLA's "savings provision," Alabama Code § 6-5-574. Additionally, because it was not unreasonable for Roberts to rely on Lanier's representations to the contrary, her claims that (1) Lanier misrepresented the agreement was valid and enforceable; (2) Lanier misrepresented the retainer was nonrefundable; and (3) Lanier wrongfully converted her funds to his personal use, were not barred by the ALSLA's statute of limitations.

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ALABAMA COURT OF CIVIL APPEALS

Dodd v. Semmes Development Co. LLC, No. 2090308. Tom Dodd Nursery granted Semmes Development Company an easement across a portion of land the nursery claimed to own in fee simple. Semmes then purchased an adjacent lot in order to develop it. Semmes intended to access this adjacent lot by way of its easement and by way of a purported public right of way between the easement property and the property purchased by Semmes known as Mill Street. In an earlier transaction involving the sale of the nursery, Elizabeth P. Dodd and Thomas Dodd entered into a land swap with the nursery. The Dodds informed Semmes that they owned the property that included the easement and Mill Street and that they intended to restrict Semmes' use of the easement. Semmes and the nursery filed an action against the Dodds to quiet title, and the Dodds demanded seeking a judgment that they had an ownership interest in the property. The Dodds claimed that Mill Street did not exist, but that it was included in a survey of the property by error. Semmes and the nursery filed a motion for summary judgment on the issue of whether Mill Street existed. The Dodds then moved for a court ordered boundary survey, arguing that there was also a discrepancy regarding the correct location of the boundary line between the easement parcel and the parcel purchased by Semmes. The trial court entered partial summary judgment for Semmes and the nursery, holding that Mill Street existed and fixing its location. The trial court certified its judgment as final under Rule 54(b) and the Dodds appealed. The Alabama Court of Civil Appeals dismissed the appeal because Rule 54(b) certification was inappropriate. The trial court had not ruled on the parcel boundary conflict and that separate adjudication of the two issues posed an unreasonable risk of inconsistent results.

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Superior Wall and Paver, LLC v. Gacek, No. 2090967. Superior Wall and Paver, LLC and the "Gaceks" entered into a contract for Superior to install pavers on the Gaceks' driveway. Following installation of the pavers, Superior sued the Gaceks alleging that the Gaceks had breached their contract with Superior by failing to pay money that was due to Superior. The Gaceks counterclaimed, alleging that Superior had improperly attempted to increase the contract price after work had begun and had not properly installed the pavers. After a bench trial, the trial court entered judgment in favor of the Gaceks. Superior appealed, arguing that the trial court erred in finding in the Gaceks' favor on Superior's breach of contract claim and erred in determining that the proper measure of damages was the amount it would cost to repair the driveway instead of the difference in market value of the Gaceks' home with a properly installed driveway and with the driveway actually installed by Superior. The Alabama Court of Civil Appeals affirmed the trial court's judgment, holding that Superior could not maintain a claim for breach of contract against the Gaceks because Superior had failed to substantially perform under the contract. In addition, the Court held that the trial court's measure of damages—the cost of repairing the driveway—was the proper measure of damages and did not constitute economic waste. The Court noted that there was evidence that the defects in Superior's performance were substantial rather than nominal. As a result, Superior's argument that the proper measure of damages was the difference in the market value of the Gaceks' home failed.

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Sustainable Forests, LLC v. Alabama Department of Revenue, No. 2091149. The taxpayer owned three single-member limited liability companies and conveyed various tracts of real property and assignments of timberland leases to each LLC. The taxpayer recorded the deeds and assignments and paid a recording tax, pursuant to Alabama Code § 40-22-1, upon filing each of the deeds and assignments. The taxpayer subsequently petitioned the Alabama Department of Revenue for a refund of the recording taxes. The petitions were deemed denied and the taxpayer appealed to the Montgomery County Circuit Court. Both parties filed motions for summary judgment, and the trial court granted the Department's motion. The taxpayer appealed to the Alabama Court of Civil Appeals arguing that, for taxation purposes, the deeds and assignments did not actually convey property to the LLCs and thus did not trigger the requirements of the recording taxes because LLCs are disregarded as entities separate from their sole owner, the taxpayer. The taxpayer did not argue for application of any of the four exceptions to the recording tax listed in Alabama Code § 40-22-1. The Court found that the recording tax is a tax on the recording of the document itself, not a tax on the underlying transaction. The Court further found that because § 40-22-1 does not specifically exclude from taxation the recording of deeds and assignments executed between a single-member LLC and its sole owner, an inference may be drawn that the recording of those documents is subject to the recording tax. Thus, the Court held that the trial court correctly determined that the taxpayer is not due a refund of the recording taxes. Therefore, the Court affirmed the summary judgment entered in favor of the Department.

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Townsend v. Hogan, No. 2100303. Townsend represented McCall, a minor, in an action against Sunrise Child Care. Sunrise and McCall settled for \$11,000. Sunrise then requested a guardian ad litem and agreed to pay his fee. The trial court appointed Hogan and approved the settlement after receiving his recommendation. Of the settlement funds, \$1,857.07 was designated to discharge a Medicaid lien. Shortly thereafter, Townsend filed a Rule 59 motion to amend the settlement, informing the court that the lien had been reduced by \$1,010.21. He also sought an additional \$333.36 but Hogan objected. The trial court agreed with Hogan and ordered Townsend to pay Hogan's fee for the new proceeding. Townsend filed a motion to amend or altar, arguing that he had created a common fund and was entitled to a portion of it. The trial court upheld its order, setting Hogan's fee at \$250. Townsend appealed. The Court of Civil Appeals affirmed the trial court. The Court held that Townsend had not created a common fund; while the lien reduction increased the portion of the settlement to which McCall was entitled, it did not create any new funds. The Court also upheld the trial court's assessment of Hogan's fee against Townsend. Because the post-judgment litigation in the action centered on Townsend's desire to secure additional attorney fees, it was Townsend—not Sunrise—who required Hogan to protect McCall's interests. The trial court's authority to reduce Townsend's contingency-fee arose from its jurisdiction over the underlying action, and it was well within the bounds of its discretion to assess the fees against the party seeking affirmative relief. On the other hand, requiring McCall to bear the costs would have defeated the purpose for which Hogan's actions were taken (maximizing McCall's portion of the distribution). Finally, the Court determined that Hogan was entitled to an additional \$2,500 guardian ad litem fee for the appeal.

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