

IN THIS ISSUE

DECISIONS ISSUED JUNE 3, 2011

ALABAMA SUPREME COURT IMPOSES TWO-YEAR STATUTE OF LIMITATIONS ON WANTONNESS CLAIMS

Last week, in Ex parte Capstone Building Corporation, No. 1090966, the Alabama Supreme Court overruled McKenzie v. Killian, 887 So. 2d 861 (Ala. 2004), in which it had held that the statute of limitations for wantonness claims was six years. In Capstone, the Court held that the two-year statute of limitations of Alabama Code § 6-2-38(*l*) applies to wantonness claims. The Court's ruling will be prospective only and will apply to any existing claims that, under McKenzie, would expire more than two years from the date of the decision. If, under McKenzie, the claim would expire within the next two years, the expiration date is not affected by Capstone. "In other words, as a result of [the Court's] holding, litigants whose causes of action have accrued on or before the date of this decision shall have two years from today's date [June 3, 2011] to bring their action unless and to the extent that the time for filing their action under the six-year limitations period announced in McKenzie would expire sooner."

SUPREME COURT OF ALABAMA

Ex parte Capstone Building Corporation, No. 1090966 [*Statute of Limitations: The Supreme Court overruled McKenzie v. Killian and held that wantonness claims are subject to a two-year statute of limitations.*] (Murdock, J., 7-1-1; Cobb, C.J., dissented).

Town of Boligee v. Greene County Water & Sewer Authority, No. 1091301 [*Municipal Authority: Where town's mayor did not possess the requisite authority to bind town, trial court erred in finding that defendant's actions undertaken after mayoral permission were authorized by law.*] (Main, J., 6-2-1).

ALABAMA COURT OF CIVIL APPEALS

[NO OPINIONS.]

CASE SUMMARIES

SUPREME COURT OF ALABAMA

Ex parte Capstone Building Corporation, No. 1090966. William Walker filed a personal injury action against Capstone Building Corporation alleging, among other things, that Capstone wantonly failed to maintain a manhole cover on its construction site and that, as a result, Walker was injured when he partially fell into the manhole. Walker filed his action over two years after the accident, and Capstone moved to dismiss, arguing that the action was barred by a two-year statute of limitations. Walker argued that a six-year statute of limitations applied to wantonness claims based on the Alabama Supreme Court's holding in McKenzie v. Killian, 887 So. 2d 861 (Ala. 2004). The trial court denied Capstone's motion, and Capstone appealed. The Court of Civil Appeals affirmed based on McKenzie, and Capstone petitioned the Alabama Supreme Court for certiorari. The Court, granting the petition, held that claims for wantonness are subject to a two-year statute of limitations. The Court rejected the McKenzie court's reasoning that, due to the higher degree of culpability required to prove wantonness, it was more akin to a common-law trespass action than an action based upon trespass on the case and was therefore subject to the six-year statute of limitations prescribed for intentional torts. The Court reasoned that unlike other intentional torts for which a six-year statute of limitations applies, wantonness does not require an intent to cause injury but rather requires only an intent to do some act with knowledge that injury will likely or probably result. Accordingly, claims of wantonness fall under the catchall provision of the statute providing for a two-year statute of limitations. The Court, however, made its decision prospective only so that persons whose cause of action accrued on or before the decision date have two years from that date to file an action, unless the six-year period under McKenzie would expire sooner. Chief Justice Cobb dissented, concluding that the "majority opinion simply puts forward the opposing arguments this Court rejected in McKenzie," which she believes was correctly decided and entitled to stare decisis.

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Town of Boligee v. Greene County Water & Sewer Authority, No. 1091301. Without consent from the town council for Boligee, the mayor executed a contract that allowed the Greene County Water & Sewer Authority to use Boligee's right-of-way to construct a water pipeline. Boligee brought an action for trespass, unlawful cutting, conspiracy, and a declaration the actions taken by the Authority were unauthorized. At trial, the circuit court determined that the mayor possessed the requisite authority to bind Boligee to the contractual agreement and dismissed Boligee's claims. The Alabama Supreme Court reversed. Alabama Code § 11-43D-14, which vests some mayors with the power to control and manage a city's affairs with public or private utility companies, did not apply to Boligee. That code provision applies only to Class 5 municipalities, and Boligee is a Class 8 municipality. Statutory law applicable to municipalities like Boligee requires the Authority to obtain municipal consent in the form of authorization from the town council. Because Boligee's council never directed the mayor to enter into the contractual agreement with the Authority, the agreement was not binding on Boligee, and thus the Authority's actions were unlawful. Further, because no member of Boligee's council attempted to misrepresent or conceal a material fact from the Authority, the doctrine of estoppel did not provide the Authority with an equitable defense for its unpermitted pipeline installation work. Concurring specially in the result, Justice Woodall noted that, because the Authority's contract with the mayor fell within the purview of the Statute of Frauds, the Authority's argument that the mayor possessed the implied authority to act on behalf of Boligee was legally inapplicable. Chief Justice Cobb dissented, arguing that principles of estoppel supported the trial court's judgment.

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