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**Green v. Cottrell**, No. 2100920 [Adverse Possession: Parties failed to establish adverse possession because their use of the property remained permissive after the death of the initial holder of legal title, who granted permission for parties’ use of the property, and because their acquiescence to the leasing of the property to third parties and to the payment of property taxes by the holder of legal title was inconsistent with exclusive, hostile, open and notorious possession.] (Moore, J., 5-0-0). [ISSUED 02/10/12]

**Hetzel v. Fleetwood Trucking Co.**, No. 2110069 [Rule 54(b) Certification: Trial court exceeded its discretion by certifying its partial summary judgment on the plaintiff’s negligent-entrustment claim as final when other pending claims required resolution of the same issue as the negligent-entrustment claim.] (Bryan, J., 5-0-0). [ISSUED 02/10/12]

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## CASE SUMMARIES

## SUPREME COURT OF ALABAMA

**Ex parte Secretary of Veterans Affairs**, No. 1101171. The Secretary of Veterans Affairs sued Frank S. Smith, Jr. seeking ejectment and possession of Smith’s house. The trial court granted summary judgment in favor of the Secretary, and Smith appealed to the Alabama Court of Civil Appeals. Smith argued that summary judgment was improper because he had objected in a written response to the Secretary’s motion for summary judgment to an affidavit offered by the Secretary. The Secretary argued that Smith waived his right to object to the admissibility of the evidence because he failed to file a motion to strike the affidavit. The Court of Civil Appeals agreed with Smith, holding that his objection via a reply brief was proper and reversed the trial court’s summary judgment in favor of the Secretary. The Alabama Supreme Court disagreed, holding that an objection to evidence is waived by the failure to file a formal motion to strike. Accordingly, the Court reversed the Court of Civil Appeals and remanded the case, holding that Smith’s informal objection was insufficient to preserve the issue for appellate review. Justice Murdock dissented, opining that the additional requirement that a party file a motion to strike is unnecessary and overly formalistic. A proper objection, he reasoned, if made and preserved in the record, gives the trial court adequate opportunity to address the issue.

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**Ex Parte Water Works**, No. 1101133. The Alabama Insurance Guaranty Association (“AIGA”) sued the Water Works and Sanitary Sewer Board of the City of Montgomery to recover money the AIGA paid on behalf of the Board on a worker’s compensation claim. The employee made his claim against the Board in 2001. In 2003, the Board’s insurer became insolvent and AIGA began paying workers’ compensation benefits. The Board and the employee settled the claim shortly thereafter. Beginning in 2003, AIGA sent multiple letters to the Board to determine whether the Board was a “high net worth” insured, from whom the AIGA is entitled to reimbursement under Alabama statute. AIGA received a response in 2009 that the Board was a high net worth insured at the time of the employee’s claim. The Board refused AIGA’s right of reimbursement by claiming a statute of limitations defense. The AIGA filed a declaratory judgment action seeking to enforce the right of reimbursement. The trial court found that AIGA’s claim did not sound in contract and thus was subject to a two-year statute of limitations. The Alabama Court of Civil Appeals reversed the trial court’s decision, holding that AIGA’s claim was governed by a six-year statute of limitations. On the Board’s petition for certiorari, the Alabama Supreme Court affirmed the Court of Civil Appeals, holding that the AIGA’s claim was an action for the recovery of money and was therefore governed by Alabama Code § 6-2-34(5), which provides a six-year statute of limitations. Concurring in the result, Justice Murdock was skeptical whether the debt was a “stated or liquidated account” within the meaning of Alabama Code § 6-2-34(5) but considered the rights and obligations of the AIGA to be in the nature of contractual rights and obligations governed by the six-year statute of limitations of Alabama Code § 6-2-34(9).

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## ALABAMA COURT OF CIVIL APPEALS

**Coleman v. BAC Servicing**, No. 2100453. BAC Servicing, agent for the Secretary of Veterans Affairs, an officer of the United States filed an ejectment action against Evelyn Coleman after she defaulted on her mortgage and refused to dispossess property that MidFirst Bank had conveyed to the Secretary. Relying on affidavits demonstrating that MidFirst had properly conveyed its interest to the Secretary, the trial court granted summary judgment in favor of BAC. Coleman appealed, arguing that one of the affidavits failed to satisfy Rule 56’s requirements and, therefore, was inadmissible evidence. Specifically, Coleman claimed that the affiant lacked personal knowledge. The Alabama Court of Civil Appeals disagreed. The affiant stated that (1) she maintained in her control the books and records forming the basis of the action, (2) she had examined those books and records, and (3) she had personal knowledge of the matters asserted in the affidavit. The Court held that a “Loan Document Audit,” upon which the affiant relied, was properly “sworn” because the affiant authenticated the document and attached it as an exhibit to the affidavit. The Court further noted that Coleman could not rely on MidFirst’s failure to comply with HUD or VA loss-mitigation requirements as a defense to the ejectment action. Even if MidFirst had represented that it would not foreclose on the property while it was working with Coleman on a loss-mitigation program, that representation was unenforceable under the Statute of Frauds. Accordingly, the Court affirmed the trial court’s grant of summary judgment based on evidence that MidFirst properly conveyed its interest in the property to the Secretary.

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**Tucker v. Wal-Mart Stores, Inc.**, No. 2100655. Tucker sued Wal-Mart under the theory of negligence, alleging that she slipped and fell on grapes that had been dropped on the floor. At trial, Tucker and Wal-Mart requested differing instructions to the jury regarding a shopkeeper’s duty. The trial court ultimately gave two of the instructions submitted by the parties, refusing to give one instruction offered by Tucker. In doing so, the trial court instructed the jury that Tucker must prove one of three things to satisfy her claim: (1) Wal-Mart had actual notice of the presence of the foreign substance on the floor; (2) Wal-Mart had constructive notice of the presence of the foreign substance on the floor; or (3) Wal-Mart was otherwise delinquent in failing to discover and remove the defective condition. The trial court then instructed the jury that the burden rests on Tucker to prove actual or constructive notice of the foreign substance on the floor. The jury returned a defense verdict. Tucker appealed, asserting that the trial court’s instructions were improper because the trial court gave confusing and misleading instructions on the shopkeeper’s duty and failed to properly instruct the jury on the delinquent inspection theory of the shopkeeper’s duty. The Alabama Court of Civil Appeals affirmed, finding that the jury instructions given by the trial court were proper. The Court determined that, in order to prove that Wal-Mart was delinquent in inspecting its floors, Tucker had to prove that the foreign substance was on the floor for a sufficient period of time such that an adequate inspection would have discovered it. The Court specifically refused Tucker’s interpretation of the delinquent inspection theory in which she argued that a plaintiff can prove delinquent inspection through evidence that a proper inspection was bound to reveal the foreign substance. Therefore, the lower court’s refusal to give the jury instruction including Tucker’s interpretation was not error.

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**Brown v. First Federal Bank et al.**, No. 2100921. Geanie and Jerry Brown took out a mortgage when they initially purchased their home. Jerry, without Geanie’s knowledge, later took out a home equity line of credit with First Federal Bank, securing that line of credit with a second mortgage. Jerry forged Geanie’s signature on that mortgage and Donielle Eaton, a First Federal Bank employee, notarized that forgery. Two months later, Jerry took out a second home equity line of credit with First Federal, again forging Geanie’s name on the mortgage. Geanie first learned of the two unauthorized mortgages on their home after she filed for divorce. When Geanie and Jerry reconciled, Geanie agreed to refinance her and Jerry’s initial loan, consolidating the home equity lines of credit with their existing home loan. Geanie filed a second action for divorce and a separate lawsuit against Jerry, First Federal Bank, and Eaton for negligence, wantonness and fraudulent suppression, among other things. The trial court granted summary judgment in favor of the defendants on all claims, and Geanie appealed. The Court of Civil Appeals affirmed the summary judgment on all claims against Eaton and First Federal and on all claims except wantonness against Jerry. The claims for negligence, wantonness and fraudulent suppression against Eaton and First Federal were barred by the two-year statute of limitations because Geanie failed to show that either Eaton or First Federal had a duty to disclose the facts underlying her claim, which would toll the statute of limitations. On the other hand, Jerry, as Geanie’s spouse, did in fact owe her a duty to disclose the facts underlying her claims against him. The Court found ample evidence that Geanie did not learn of the unauthorized mortgages until a year before filing the lawsuit. Accordingly, the statute of limitations was tolled with respect to the wantonness claim against Jerry, and that claim was timely. The Court rejected Jerry’s argument that Geanie had constructive notice of the mortgages due to bank statements showing that marital funds were used to pay off the second mortgage, holding that Alabama Code § 7-4-406 does not mean that bank customers who fail to review their statements are deemed, as to third-parties, to have constructive notice of the items in the statement. The Court also rejected Jerry’s argument that the recording of the mortgages provided constructive notice because, unlike subsequent parties in a chain of title, Geanie had no duty to search the record. Finally, the Court held that ratification is not a defense to wantonness; it was therefore irrelevant that Geanie voluntarily refinanced the loan.

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**Department of Industrial Relations v. Frederick**, No. 2100981. In November 2009, Wal-Mart terminated the employment of Farrah M. Frederick. Thereafter, Frederick sought unemployment compensation benefits for a two week period. The Department of Industrial Relations (“DIR”) denied her claims, finding that Wal-Mart dismissed her from employment for misconduct not related to connection with work after previous warning. After exhausting her appeals to DIR, Frederick appealed to the Circuit Court of Franklin County. The trial court entered judgment in favor of Frederick, finding that Wal-Mart did not discharge her from employment for deliberate misconduct and she was qualified and eligible to receive unemployment benefits. Accordingly, the trial court awarded her 26 weeks of benefits. On appeal, DIR’s sole argument was that Frederick was entitled to benefits for only the two weeks for which she filed claims, as opposed to the 26 weeks of benefits awarded by the trial court. The Alabama Court of Civil Appeals agreed, reasoning that Frederick failed to carry her burden of proving eligibility for, and entitlement to, benefits beyond the two weeks for which she requested benefits. The Court thus affirmed the trial court’s order insofar as it awarded Frederick two weeks of unemployment benefits and reversed the trial court’s judgment insofar as it awarded Frederick an additional 24 weeks of benefits.

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**G.A. West & Co., Inc. v. Johnston**, No. 2100980. Plaintiff-employee suffered a workplace injury to his back during the scope of his employment with Defendant-employer. Thereafter, Plaintiff filed suit seeking workers’ compensation benefits for permanent and total disability under Alabama’s Workers’ Compensation Act, Alabama Code § 25-5-1, et seq. (the “Act”). The trial court awarded Plaintiff permanent and total disability benefits for the remainder of his life. Defendant appealed arguing, among other things that, under Alabama Code § 25-5-51, Plaintiff’s claim for benefits was barred because Plaintiff misrepresented his medical history in a medical questionnaire. The Alabama Court of Civil Appeals, in affirming the trial court in part, held that Defendant failed to present any evidence to support its contention that Plaintiff’s prior medical history would have substantially increased the likelihood that Plaintiff would become disabled as a result of his workplace accident at issue. Moreover, the Court rejected Defendant’s misrepresentation defense, finding that Plaintiff’s failure to disclose his prior treatment or diagnosis for back pain, which was not significant, did not amount to a misrepresentation of his physical condition. The Court, in reversing the trial court in part, determined that the trial court erred in awarding Plaintiff compensation for the remainder of his life, rather than for the period of his permanent total disability. Judge Moore dissented, noting that the trial court erred by failing address the employer’s misrepresentation defense in its written judgment as required by the Act.

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**Green v. Cottrell**, No. 2100920. A land dispute arose between parties regarding three parcels of property. The trial court found that E’Stella Alexander Webb Cottrell (“Cottrell”) and the heirs of Johnny Alexander, Sr. (the “Alexander heirs”) had established title to the three parcels through adverse possession. The trial court entered a judgment quieting title to the three parcels in the Alexander heirs and Cottrell. The holder of legal title to the property appealed this judgment to the Alabama Court of Civil Appeals. The Alexander heirs appealed the judgment to the extent that it awarded Cottrell an interest in the property. The Court found that the Alexander heirs’ and Cottrell’s initial use of the property was permissive because they lived on the property with the permission of the initial holder of legal title and that their continued use of the property after the holder’s death remained permissive. Additionally, the Court found that Alexander and Cottrell acknowledged that others owned the property through their acquiescence to the leasing of the property to third parties and to the payment of taxes by the holder of legal title. Therefore, the Court held that the Alexander heirs and Cottrell failed to establish the elements of adverse possession because the use of the property was permissive and their acquiescence was inconsistent with exclusive, hostile, open and notorious possession. The Court therefore reversed the trial court’s judgment and remanded the case to the trial court for the entry of a judgment quieting title to the three parcels in the holder of legal title. The Court found that the issues asserted by the Alexander heirs in their appeal were moot.

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**Hetzel v. Fleetwood Trucking Co.**, No. 2110069. Plaintiff Carrie Hetzel filed a lawsuit against truck driver Russell Young and his employer, Fleetwood Trucking Company, Inc., after she was involved in a car accident with Young. She alleged that Young negligently and/or wantonly operated the truck and that Fleetwood negligently and/or wantonly hired, trained and/or supervised Young, negligently and/or wantonly entrusted the motor vehicle to Young, and was vicariously liable for the negligent and/or wanton conduct of Young. The trial court granted Fleetwood’s motion for partial summary judgment on Hetzel’s negligent-entrustment claim and certified its judgment as final under Rule 54(b) of the Alabama Rules of Civil Procedure. On appeal by Hetzel, the Alabama Court of Civil Appeals held that the trial court exceeded its discretion by certifying its partial summary judgment as final because the negligent entrustment claim concerning Young’s competency as a driver and other pending claims depended, in part, on Young’s competency as a driver. Because there was no final judgment the Court dismissed the appeal.

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**Lindsey v. Aldridge**, No. 2100491. Wanda Sue Lindsey filed a lawsuit against several adjacent landowners, asking the trial court to determine the location of the boundary line between their properties and to include the defendants from trespassing on her land. Lindsey later amended her complaint to enjoy an adverse possession claim. After a bench trial, the trial court determined that Lindsey failed to prove that she owned any portions of the parcels at issue by virtue of adverse possession. On appeal, Lindsey argued that the trial court improperly interpreted her amended complaint adding an adverse possession claim as a claim superseding her boundary-line dispute claim. The Alabama Court of Civil Appeals first noted that when coterminous landowners claim to have acquired a portion of another coterminous owner’s land by adverse possession the dispute is based in an adverse possession claim rather than a boundary-line dispute. The Court also explained that boundary disputes are subject to a unique set of requirements that is a “hybrid” of adverse possession by prescription and statutory adverse possession; in a boundary dispute, the coterminous land owners may alter their boundary line by agreement plus possession for ten years, or by adverse possession for ten years. But, where a plaintiff is claiming to have acquired all or a significant portion of another coterminous landowner’s land by adverse possession, this “hybrid standard” does not apply, and the plaintiff must prove the standard elements for either adverse possession by prescription or statutory adverse possession. The Court held that the hybrid standard did not apply because Lindsey’s complaint sought to acquire a significant portion of the defendants’ property. Lindsey did not plead statutory adverse possession; the only way she could succeed was by proving the elements of adverse possession by prescription—a standard which requires twenty years of continuous possession. Because Lindsey did not put on evidence suggesting she had possessed the disputed land for twenty years, and because the defendants also disputed the remaining elements of adverse possession by prescription, the Court held that there was sufficient evidence to support the ruling and affirmed the trial court’s judgment.

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