RECENT DECISIONS OF THE ALABAMA SUPREME COURT AND THE ALABAMA COURT OF CIVIL APPEALS

CIVIL LAW

SUMMER CONFERENCE FOR CIRCUIT AND DISTRICT COURT JUDGES

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ARBITRATION **THE MOTION TO COMPEL ARBITRATION WAS PROPERLY DENIED AS TO CLAIMS THAT WERE WITHIN THE SPECIFIC PERFORMANCE EXCEPTION TO THE ARBITRATION PROVISION; HOWEVER, ALL OTHER CLAIMS WERE SUBJECT TO ARBITRATION.**

Porter v. Williamson,
2015 LEXIS 2 (Ala.)(January 30, 2015)

HOLDINGS:

In a case authored by Justice Main, the Court found as follows:

1. **In the parties' multi-claim dispute regarding the value of plaintiff's shares upon his termination of employment and retirement as a shareholder, defendants' motion to compel arbitration of claims for specific performance and injunctive relief was properly denied because those claims were within the specific-performance exception to the arbitration provision; and**

2. **To the extent remaining claims of rescission, misrepresentation, and suppression, and conversion were still being litigated, they were subject to arbitration because they were not within the specific-performance exception to the arbitration provision.**

OUTCOME:

Judgment of trial court affirmed as to denial of defendant's motion to compel arbitration of certain claims; as to remaining claims, judgment reversed and remanded with instructions for trial court to dismiss those claims or grant the motion to compel arbitration of them.

ARBITRATION **THE ORDER OF THE ARBITRATOR WAS DUE TO BE VACATED BECAUSE THE ARBITRATOR FAILED TO DISCLOSE A SIGNIFICANT BUSINESS RELATIONSHIP BETWEEN THE ARBITRATOR'S FINANCIAL FIRM AND THE INVESTMENT ADVISOR AND THE BROKER-DEALER WHO SECURED AN AWARD AGAINST A NON-PROFIT CORPORATION.**

Mun. Workers Comp. Fund, Inc., v. Morgan Keegan & Co.,
2015 LEXIS 43 (Ala.) (April 3, 2015).

HOLDINGS:

In a case authored by Justice Bolin, the Court found as follows:

1. **A nonprofit corporation was entitled to vacate an arbitration award in favor of the nonprofit's investment advisor and broker-dealer, under the Federal Arbitration Act, *9 U.S.C.S. § 10(a)(2),* because the arbitrator's failure to disclose the significant business relationship between the arbitrator's financial firm and the investment advisor and broker-dealer created a reasonable impression of impartiality constituting an evident partiality on the arbitrator's part, and the impression of bias arising from that relationship was direct, definite, and capable of demonstration; and**

2. **The trial court properly took judicial notice of South Carolina litigation, *Ala. R. Evid., 201,* because the court considered the papers for the limited purpose of, inter alia, that the arbitrator was named as a third-party defendant in that litigation, which involved claims similar to the nonprofit's.**

OUTCOME:

Judgment reversed and matter remanded.

ARBITRATION **THE POLICY HOLDERS MANIFESTED THEIR AGREEMENT TO THE ARBITRATION AGREEMENT IN THEIR INSURANCE POLICIES BY CONTINUING TO RENEW THE POLICIES, AND THE COURT FOUND THAT THE ARBITRATION PROVISION WAS NOT UNCONSCIONABLE.**

Am. Bankers Ins. Co., v. Tellis,
2015 LEXIS 86 (Ala.) (June 26, 2015)

HOLDINGS:

In an opinion authored by Justice Stuart and concurred in by Justices Bolin, Parker, Shaw, Main and Wise, the Court found as follows:

1. **The Court held that the parties agreed to arbitrate the claim even if it was not disclosed in the application and was only contained in the policy;**

2. **The Court found that the underlying transaction - the sale of the insurance policies affected interstate commerce and was therefore enforceable; and**

3. **The trial court was required to grant the insurance company's mtoion to compel arbitration.**

Chief Justice Moore and Justice Murdock dissented.

Chief Justice Moore authored the dissent. Moore wrote that he did not agree with the holding of the majority of the Justices for two reasons:

1. An application of the Federal Arbitration Act is unconstitutional under the Seventh Amendment to the United States Constitution; and

2. The right to a jury trial and any waiver of that right must be knowingly, willingly, and voluntarily waived and the policyholder's purported waiver in the case did not meet those requirements.

ARBITRATION **THE PARTY AGAINST WHOM THE AWARD WAS ENTERED DID NOT DEMONSTRATE THAT THE ARBITRATOR EXCEEDED HIS AUTHORITY NOR DID THE APPELLANT DEMONSTRATE THE NECESSARY "EVIDENT PARTIALITY" OF THE ARBITRATOR.**

J. Don Gordon Constr., Inc., v. Brown,
2015 LEXIS 71 (Ala.) (June 5, 2015)

HOLDINGS:

In a case authored by Justice Bryan that was concurred in by Justices Bolin, Parker, Shaw, Main, and Wise with which Chief Justice Moore concurred, Justice Murdock concurred in the result, and Justice Stuart recused herself, the Court found as follows:

1. **The appellant defendant failed to argue to the arbitrator that he lacked the authority to award a judgment in favor of two non-signatories to an arbitration agreement and therefore waived his right to argue that the arbitrator lacked the authority to do so.**

2. **The arbitrator's relationship in an unrelated matter with attorneys in the law firm of the plaintiff's attorney did not establish "evident partiality."**

OUTCOME:

Affirmed.

CIVIL PROCEDURE
CLASS ACTION CERTIFICATION

THE CERTIFICATION OF THE CLASS DID NOT MEET THE PROCEDURAL REQUIREMENTS OF ALA. CODE § 6-5-641 REQUIRING A RIGOROUS ANALYSIS OF THE CLASS ALLEGATIONS.

Baldwin Mut. Ins. Co., v. McCain,
2015 LEXIS 22 (Ala.) (February 20, 2015)

HOLDINGS:

In a case authored by Justice Stuart with whom Justices Parker, Shaw, and Wise concurred and Chief Justice Moore concurred in the result, the Court found as follows:

1. **The standard of review of a class certification to determine whether the Court exceeded its discretion would require a de novo review of the question of whether the trial court applied the correct legal standard in reaching its decision to certify the class;**

2. **A trial court's class certification order would not be disturbed without a showing that in entering the order the court exceeded the permissible limits of its discretion;**

3. **The trial court failed to give the insurance company the opportunity to oppose the certification of the class at a hearing conducted for that purpose pursuant to Section 6-5-641.**

OUTCOME:

The Order was reversed and the matter was remanded for further proceedings.

CIVIL PROCEDURE
EVIDENCE **ADMISSIBILITY OF POLICE REPORT WAS PROPERLY DENIED PRIMARILY IN THAT HE HAD NO INDEPENDENT RECOLLECTION OF THE CONTENTS AND GATHERED THE INFORMATION FROM THE PARTIES AFTER THE FACT.**

Crusoe v. Davis,
2015 LEXIS 23 (Ala.) (February 20, 2015)

HOLDINGS:

In a case authored by Chief Justice Moore, the Court found as follows:

1. **A motorist and passenger's motion for a new trial in their negligence action, arising from an automobile accident, was properly denied because the exclusion of the testimony of a policeman who prepared the accident report was proper under Ala. R. Evid. 612, as he admitted that he had no independent recollection of the contents thereof;**

2. **Moreover, the report was not admissible under the past recollection recorded exception of Ala. R. Evid. 803(5) because the officer had no firsthand knowledge of what happened when the accident occurred and the report merely reflected information he had gathered from the parties after the fact; and**

3. **The report was also not admissible as an admission by a part opponent under Ala. R. Evid. 801(d)(2)(A) because it did not contain statements attributed to the driver.**

OUTCOME:

Order affirmed.

CIVIL PROCEDURE
JUDGMENTS — **UNDER THE ORE TENUS STANDARD, QUESTIONS OF LAW ARE REVIEWED DE NOVO AND WHEN A TRIAL COURT MAKES NO SPECIFIC FINDINGS OF FACT, THE SUPREME COURT OF ALABAMA WILL ASSUME THAT THE TRIAL JUDGE MADE THE FINDINGS NECESSARY TO SUPPORT THE JUDGMENT ENTERED.**

CONTRACTS
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CONTRACTS
STATUTE OF FRAUD
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Branch Banking & Trust Co., v. Nichols,
2015 LEXIS 54 (Ala.) (April 24, 2015)

HOLDINGS:

In a case authored by Justice Bryan, the Court found as follows:

1. **Judgment was erroneously granted to appellees in their breach of contract action, arising from loan disputes between the parties, as the Statute of Frauds, Ala. Code § 8-9-2(7), was not satisfied by alleged oral agreements to modify the loan so that it would carry interest going forward, and for lending additional funds;**

2. **Moreover, their tort claims also failed as a matter of law because they turned on the existence of alleged agreements that could not be proved, consistent with § 8-9-2, to support a breach-of-contract claim, such that the tort claims were also barred; and**

3. **Appellees could not recover damages under a theory of promissory estoppel because that theory could not be used to enforce an oral agreement that was void under the Statute of Frauds.**

OUTCOME:

Judgment reversed; matter remanded with instructions for trial court to enter judgment for appellants on appellees' claims, and in favor of lender on counterclaims against appellees.

CIVIL PROCEDURE
JUDGMENTS

A POST-JUDGMENT MOTION WAS DUE TO BE GRANTED BECAUSE THE WAIVER OF EXEMPTIONS THAT WAS THE SUBJECT OF THE TRIAL COURT'S RULING WAS NOT CONTAINED IN THE GUARANTY AGREEMENT SIGNED BY THE APPELLANTS.

Steinfurth v. Ski Lodge Apts., LLC
2015 LEXIS 47 (Ala.) (April 17, 2015)

HOLDINGS:

In a case authored by Justice Parker, the Court found as follows:

1. **It was error to deny a post-judgment motion under Ala. R. Civ. P. 59(e) by guarantors of a promissory note debt for an amendment to the judgment, which held that they had waived their personal exemptions under Ala. Code § 6-10-123, because only the promissory note , and not the guaranty agreement, contained such waiver, and the guarantors did not sign the promissory note in their individual capacities;**

2. **Although the lender did not specifically plead such waiver in the complaint, it attached the loan documents pursuant to Ala. R. Civ. P. 10(c), which met the requirements for the purposes of § 6-10-123, and the guarantors had notice and an opportunity to be heard on the issue; and**

3. **The promissory note and guaranty agreement were not "one and the same contract" because the terms and conditions of the promissory note were not incorporated into the guaranty agreement.**

OUTCOME:

Judgment was reversed and the matter remanded for further proceedings.

CIVIL PROCEDURE - JUDGMENTS
RELIEF FROM JUDGMENTS VIA MOTIONS FOR NEW TRIAL

THE MOTION FOR NEW TRIAL WAS NOT DUE TO BE GRANTED IN THAT THE JURY'S VERDICT WAS SUPPORTED BY CONFLICTING EVIDENCE AS TO THE CLAIMS OF NEGLIGENCE AND AS TO THE DEFENSE OF CONTRIBUTORY NEGLIGENCE - - ISSUES THAT WERE DECIDED IN FAVOR OF THE DEFENDANT.

Lemley v. Wilson,
2015 LEXIS 34 (Ala.) (March 6, 2015)

HOLDINGS:

In a Per Curiam opinion, the Court found as follows:

1. **A city worker's personal representative was not entitled to a new trial in a negligence action alleging a driver struck and killed the worker who was monitoring traffic because, inter alia, based on the conflicting evidence, the jury could have concluded the driver's speed at the time of the accident was not the proximate cause of the worker's injuries and, as such, the driver was not negligent; there was also conflicting evidence as to whether the driver applied his brakes; and**

2. **Even if the jury had concluded the driver was negligent, there was evidence to support a finding by the jury that the worker was contributorily negligent because, inter alia, there were no warning signs in the area, the worker was not wearing a safety vest at the time of the accident, and the worker did not have any warning flags, signs, or devices near him in the roadway.**

OUTCOME:

The Order was reversed and the matter was remanded with instructions.

CIVIL PROCEDURE
JURISDICTION

THE ABILITY TO CHANGE A CHILD'S NAME IS WITHIN THE REALM OF MATTERS IN RESPECT TO THE CUSTODY OF THE CHILD WHICH IS ENCOMPASSED WITHIN THE EQUITY JURISDICTION OF THE CIRCUIT COURT, NOT THE PROBATE COURT PURSUANT TO ALA. CODE § 30-3-1.

Russell v. Fuqua,
2015 LEXIS 39 (Ala.) (March 20, 2015)

HOLDING:

In a Per Curiam opinion, the Court found as follows:

The probate court erred in granting a father's petition to change the legal name of his daughter over the mother's objection because it had no subject-matter jurisdiction over the parties' name-change dispute; as the change of a child's name is a matter affecting the child and within the realm of matters in respect to the custody of the child, that subject was encompassed by the circuit court's equity jurisdiction and within its jurisdiction under Ala. Code § 30-3-1.

OUTCOME:

The order was vacated and the appeal was dismissed.

CIVIL PROCEDURE

MOTION TO SEAL COURT RECORDS THE TRIAL COURT HAD A DUTY TO CONDUCT A HEARING ON ONE OF THE DEFENDANT'S MOTION FOR LEAVE TO FILE HIS MOTION TO STAY UNDER SEAL.

Ex parte Barze,
2015 LEXIS 87 (Ala.) (June 26, 2015)

HOLDING:

In a case authored by Justice Wise in which Justices Stuart, Bolin, Parker, Murdock, Shaw, Main and Bryan concurred and Chief Justice Moore concurred in the result, the Court found as follows:

1. **A trial court should not seal court records except upon a written finding that the movant has proved by clear and convincing evidence that the information contained in the document sought to be sealed:**

   (1) constitutes a trade secret or other confidential commercial research or information;

   (2) is a matter of national security;

   (3) promotes scandal or defamation;

   (4) pertains to a wholly private family matter, such as divorce, child custody, or adoption;

   (5) poses a serious threat of harassment, exploitation, physical intrusion or other particularized harm to the parties to the action; or

   (6) poses the potential for harm to third persons not parties to the litigation.

2. **The trial court had a duty to make written findings that Holbrook had proved by clear and convincing evidence contained in his motion to stay fell within one of the six categories set forth in *Holland v. Eads,* 614 So.2d 1012 (Ala. 1993).**

OUTCOME:

Petition granted and writ issued.

CIVIL PROCEDURE
MOTIONS FOR SUMMARY JUDGMENT

THE RULE 56(E) AFFIDAVIT CONSTITUTED SUBSTANTIAL EVIDENCE THAT CREATED A GENUINE ISSUE OF MATERIAL FACT AND THE FACT THAT THE ATTORNEY FILED AN AFFIDAVIT IN SUPPORT OF A REQUEST FOR ADDITIONAL TIME DID NOT ALLOW THE COURT TO DISREGARD THE MEMBER'S AFFIDAVIT.

Adams v. Tractor & Equip. Company,
2015 LEXIS 55 (Ala.) (May 1, 2015)

ISSUE:

Whether the trial court erred in granting a company summary judgment on its third-party breach-of-guaranty complaint against an LLC member.

HOLDINGS:

In a case authored by Justice Bryan, the Court found as follows:

1. **The member's claim that the guaranty violated the Statute of Frauds, *Ala. Code § 8-9-2,* failed, as he did not raise that defense in his answer, and the fact of the company's third-party complaint did not show that its breach-of-guaranty claim was barred by §8-9-2;**

2. **The member's Ala. R. Civ. P. 56(e) affidavit stating he did not sign the guaranty constituted substantial evidence demonstrating a genuine issue of material fact as to whether he was bound by the guaranty; and**

3. **A Rule 56(f) affidavit by counsel filed in support of a request for additional time for discovery, which stated that the company presented evidence that the member executed the guaranty agreement, did not allow the court to disregard the member's affidavit.**

OUTCOME:

The judgment was reversed.

CIVIL PROCEDURE -

RESPONSE TO AN ORDER ISSUED BY FEDERAL DISTRICT COURT

A FEDERAL DISTRICT COURT ADJUDICATES THE OBLIGATION OF A DEFENDANT OR DEFENDANTS ONLY WITH RESPECT TO THE PLAINTIFF OR PLAINTIFFS IN THE CASE BEFORE THE COURT, THE REQUESTED EXTENSION OF TIME TO RESPOND TO THE ALABAMA SUPREME COURT BASED ON AN EXPECTED DECISION BY THE ALABAMA JUDICIAL INQUIRY COMMISSION OR THE RESPONSE OF THE FEDERAL DISTRICT COURT TO A MOTION FOR A STAY OFFER NO BASIS FOR DELAY.

Ex parte State ex rel. Ala. Policy Inst.,
2015 LEXIS 35 (Ala.) (March 10, 2015)

HOLDINGS:

In a case authored by Justice Stuart with whom Justices Parker, Murdock, Main, Wise and Bryan concurred and Justice Shaw dissented, the Court found as follows:

1. **A probate judge's request for an extension to respond to an order of the Alabama Supreme Court regarding whether he was bound by any existing federal court order as to the issuance of any marriage license other than the marriage licenses he was ordered to issue in *Strawser* was denied as the Alabama Judicial Inquiry Commission from which he sought an opinion had no knowledge of the facts;**

2. **That the judge had asked the federal district court for a stay of *Strawser* offered no basis for delay;**

3. **The state's highest court's March 3 opinion was binding and directed probate judges not to issue marriage licenses contrary to that opinion;**

4. *Strawser* had no continuing, binding effect on the judge; and

5. The inclusion of the judge as a respondent subject to the March 3 order as to marriage-license applicants was necessary toward achieving order and uniformity in the application of Alabama's marriage laws.

As to the dissent, no dissenting opinion was included.

OUTCOME:

Judge's motion for extension denied. Judge added to mandamus proceeding as a respondent.

CIVIL PROCEDURE **"STANDING" DOES NOT RELATE TO THE MERITS OF THE CLAIM ASSERTED BY THE PLAINTIFF.**

Ex parte Scottsdale Ins. Co.
2015 LEXIS 51 (Ala.) (April 17, 2015)

HOLDINGS:

Chief Justice Moore and Justices Stuart, Bolin, Parker, Shaw, Main, Wise, and Bryan concurred in an Order denying a petition for writ of mandamus. Justice Murdock wrote a special concurrence in which he found as follows:

1. **Interlocutory appellate review is not available by way of a petition for writ of mandamus seeking to overturn a trial court's denial of a motion to dismiss or its denial of a motion for summary judgment.**

2. **Scottsdale's contention that the plaintiff did not have "standing" to file an action alleging breach of contract and bad faith because the plaintiff was not a party to the contract at issue was not an issue of standing but was instead an issue of the merits of the plaintiff's claims for breach of contract and bad faith against Scottsdale based on Scottsdale's contentions that the plaintiff was not a party to the contract.**

3. **Standing is not a gate-keeping mechanism in private law actions as opposed to public law actions.**

CIVIL PROCEDURE

LIMITATION OF ACTIONS

THE PAYMENT OF FILING FEES REQUIRED BY ALA. CODE § 12-19-70 OR THE FILING OF A COURT APPROVED VERIFIED STATEMENT OF SUBSTANTIAL HARDSHIP IS A JURISDICTIONAL PREREQUISITE TO THE COMMENCEMENT OF AN ACTION FOR THE PURPOSES OF A STATUTE OF LIMITATIONS.

Arrington v. Courtyard Citiflats, LLC (Ex parte Courtyard Citiflats),
2015 LEXIS 80 (Ala.) (June 12, 2015)

HOLDINGS:

In a case authored by Justice Shaw, the Court found as follows:

1. **Plaintiff's failure to pay the filing fee required under *Ala. Code § 12-19-70* for her tort complaint or to have her hardship statement approved prior by the time the complaint was filed was a jurisdictional defect that could not be cured by a nunc pro tunc order approving plaintiff's hardship statement retroactive to the date her complaint was originally filed;**

2. **Defendants were entitled to a writ of mandamus directing the trial court to dismiss the tort action because the hardship statement was not approved until after the statute of limitations had run on the action; and**

3. **Plaintiff below failed to allege circumstances sufficient to demonstrate that she was entitled to equitable tolling of the statute of limitations.**

OUTCOME:

Petition granted; writ issued.

CIVIL PROCEDURE - STAY

A STAY OF THE CIVIL PROCEEDINGS DUE TO PENDING CRIMINAL PROCEEDINGS WAS NOT REQUIRED.

Ex parte Butts,
2015 LEXIS 74 (Ala.) (June 5, 2015)

HOLDINGS:

In a case authored by Justice Bryan in which Chief Justice Moore and Justices Stuart, Bolin, Parker, Murdock, Shaw, Main and Wise concurred, the Court found as follows:

1. **A co-owner of a company was not entitled to mandamus relief because the trial court did not err by holding a valuation hearing or determining a corporation's value while a criminal case was pending against the co-owner;**

2. **The determination of the corporation's value under Ala. Code § 10A-2-14.34 was not a parallel proceeding to the criminal theft charges against the co-owner because the relevant inquiries for the two proceedings were different, the co-owner's right against self-incrimination was not threatened by the evaluation proceeding, and the trial court did not refuse to perform an imperative duty when it did not rule on whether to stay the remainder of the civil case.**

OUTCOME:

Petition denied and stay lifted.

CIVIL PROCEDURE

VENUE

DESPITE THE FACT THAT THE CASE WAS FILED IN A COUNTY IN WHICH VENUE WAS APPROPRIATE, THE COURT FOUND THAT THE INTEREST OF JUSTICE PRONG OF SECTION 6-3-21.1 REQUIRES TRANSFER OF THE CASE TO ANOTHER COUNTY.

Ex parte Quality Carriers, Inc.,
2015 LEXIS 75 (Ala.) (June 5, 2015)

HOLDINGS:

In a case authored by Justice Wise in which Justices Stuart, Bolin, Parker, Shaw, Main and Bryan concurred and Chief Justice Moore dissented without opinion, the Court found as follows:

1. **At issue were claims arising out of an automobile accident. However, the lawsuit was due to be transferred to another county because the accident from which all the claims in the case arose occurred in the county to which the defendants sought a transfer.**

2. **Key witnesses to the case and the issues in the case lived in the county to which the case would be transferred and the persons who were injured were hospitalized in the county to which the case was to be transferred.**

Therefore, the interest of justice prong of the forum non conveniens statute required transfer of the action to the county to which the accident occurred.

CONSTITUTIONAL LAW **THE SAME-SEX MARRIAGE PROHIBITION DID NOT VIOLATE SUBSTANTIVE DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION BECAUSE UNDER A RATIONAL BASIS ANALYSIS, AND THERE WAS NO VIOLATION OF EQUAL PROTECTION BECAUSE THERE WAS A RATIONAL BASIS BY RECOGNIZING AND ENCOURAGING TIES BETWEEN CHILDREN AND BIOLOGICAL PARENTS.**

Ex parte State ex rel. Ala. Policy Inst.,
2015 LEXIS 33 (Ala.) (March 3, 2015)

HOLDINGS:

In a Per Curiam opinion the Court found as follows:

1. **The Supreme Court of Alabama had jurisdiction under Ala. Code § 12-2-7(2) to provide relief in a dispute among probate judges as to the validity of issuing a marriage license to same-sex couples under Ala. Code § 30-1-19(b) and (d) and Ala. Const. Art. I, § 36.03, as there was a need for immediate uniform relief, the magnitude and importance of the issue was unparalled, and no other court could provide statewide relief;**

2. **The same-sex marriage prohibition did not violate substantive due process under U.S. Const. Amend. XIV because under a rational basis analysis, offering marriage solely to heterosexuals served to prevent out-of-wedlock pregnancies, and there was no animus shown; and**

3. **There was also no violation of equal protection because there was a rational basis by recognizing and encouraging ties between children and biological parents.**

OUTCOME:

Petition was granted and writ issued.

CONSTITUTIONAL LAW
ELEVENTH AMENDMENT
DUE PROCESS AND EQUAL PROTECTION CLAUSES

THE UNITED STATES SUPREME COURT FOUND THAT UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT, SAME-SEX COUPLES HAVE A FUNDAMENTAL RIGHT TO MARRY.

THERE IS NO LAWFUL BASIS FOR A STATE TO REFUSE TO RECOGNIZE A LAWFUL SAME-SEX MARRIAGE PERFORMED IN ANOTHER STATE.

***Obergefell v. Hodges,* 2015 U.S. LEXIS 4250 (June 26, 2015)**

HOLDINGS:

1. **The United States Supreme Court found that under the due process and equal protection clauses of the Fourteenth Amendment, same-sex couples have a fundamental right to marry.**

2. **There is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state.**

DISCUSSION:

Justice Kennedy delivered the opinion of the Court in which Justices Ginsburg, Breyer, Sotomayor, and Kagan joined. Chief Justice Roberts filed a dissenting opinion in which Justices Scalia and Thomas joined. Justice Scalia filed a separate dissenting opinion in which Justice Thomas joined. Justice Thomas filed a separate dissenting opinion in which Justice Scalia

joined. Justice Alito filed a dissenting opinion in which Justices Scalia and Thomas joined.

A. The Court first addressed the "history of the subject now before the Court."

Justice Kennedy noted that "The centrality of marriage to the human condition makes it unsurprising that the institution has existed for millennia and across civilizations. Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies together." Justice Kennedy cited to Confucius and Cicero for the principal that marriage lies at the foundation of government and that the first bond of society is marriage, next children, and then the family. Justice Kennedy cited to the circumstances of three of the cases before the Court. As to Plaintiff Obergefell, Kennedy noted that although he and his partner were married in Maryland, when the partner died shortly thereafter in Ohio, Obergefell could not be listed as the surviving spouse on the Death Certificate.

Justice Kennedy cited to the Plaintiff DeBoer and her partner in regard to their children in that only one of them could be a legal parent and that the other parent had no legal rights over the children and could not respond to an emergency relating to the children.

The third case to which Kennedy related to a couple who were married in a state in which same-sex marriage was permitted, New York, but were deprived of the right to live together as a married couple when they moved to Tennessee. Kennedy addressed also the history of the change in societies and states acceptance of "gays and lesbians."

Kennedy then outlined the different views regarding same-sex marriages that were expressed through judicial or legislative processes in those states.

B. Kennedy's analysis that same-sex marriages are required under the due process clause of the Fourteenth Amendment.

Stating that no state shall "deprive any person of life, liberty, or property without due process of law." Kennedy stated that these liberties extend to certain personal choices central to individual dignity and autonomy including "intimate choices that define personal identity and beliefs." Kennedy stated that it was up to the Courts to "exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect." He stated that although the issue was not addressed by the Bill of Rights and the Fourteenth Amendment that "When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed."

Kennedy cited to the case of *Loving v. Virginia*, 388 U.S. 1, 12 (1967) in which the court invalidated bans on interracial marriages; *Zablocki v. Redhail*, 434 U.S. 374 (1978) which

addressed a law prohibiting fathers who were behind on child support from marrying; and *Turner v. Safley*, 482 U.S. 78, 95 (1987) which held that the right to marry was abridged by regulations limiting the privilege of prison inmates to marry.

Kennedy reasoned that the obligation of the Court to respect the basic reason why the right to marry had been long protected compelled the conclusion that same-sex couples may exercise the right to marry and cited to four principles and traditions that compelled the conclusion:

(1) The right to personal choice regarding marriage is inherent in the concept of individual autonomy.

(2) The right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals.

(3) Protecting the right to marry is necessary because it safeguards children and families and thus draws meaning from related rights of child rearing, procreation, and education.

(4) The Nation's traditions make it clear that marriage is a keystone of our social order. In support, Kennedy cited to the writings of Alexis de Tocqueville.[1]

Kennedy rejected the respondent's reliance on *Washington v. Glucksbert*, 521 U.S. 702, 721 (1997) in which the Court called for a "careful description" of fundamental rights available under the Fourteenth Amendment and due process considerations. Kennedy responded that the Court had rejected that approach both with respect to the right to marry and the rights of gays and lesbians. Kennedy found that interpreting the equal protection clause the Court "has recognized that new insights and sociality understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged."

[1]Tocqueville was commissioned by the King of France in the 1830's to come to American and Canada to study the prison system. He spent 9 months in the United States and part of the time devoted his attention to Canada. He wrote essentially an epistolary treatise - a series of letters to the King of France, one of the post Napoleon King Louis' re: the American society and what he described as advice to society as to how it should respond to the changes in American society being experienced during the 1800's.

He concluded that:

These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty."

B. Kennedy wrote that there was no reason to "proceed with caution - to await further legislation, litigation and debate."

Kennedy noted that "when the rights of persons are violated, "the Constitution requires redress by the Courts notwithstanding the more general value of democratic decision making."

Kennedy found that religious organizations and persons were not affected by the decision because they still had their First Amendment rights "to teach the principals that are so fulfilling and so central to their lives and faith, and to their own deep aspirations to continue the family structure they have long revered."

DISSENT:

A. Dissent authored by Chief Justice Roberts.

1. Roberts contended that the Supreme Court was not a legislature and that as Judges they had the power to say what the law is and not what it should be.

Roberts stated that under the Constitution, Judges were authorized to enforce the law but "neither force nor will but merely judgment." Citing to The Federalist papers authored by Hamilton, Roberts wrote that the fundamental right to marry "does not include a right to make a State change its definition of marriage." Roberts found that the Court took "the extraordinary step of ordering every State to license and recognize same-sex marriage" and "five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law."

Roberts wrote that the majority expressly disclaims "judicial

caution and omits even a pretense of humility, openly relying on its desire to remake society according to its own 'new insight' into the 'nature of injustice.'"

Roberts said that what the dissent was about was "whether, in our democratic republic, that decision should rest with the people acting through their elected representatives, or with five lawyers who happen to hold commissions authorizing them to resolve legal disputes according to law. The Constitution leaves no doubt about the answer."

As to the majority's reliance on the existence of marriage for millennia and across civilization, Roberts pointed out that "across all those civilizations, "marriage" referred to only one relationship: the union of a man and a woman."

The Constitution itself says nothing about marriage, and the Framers thereby entrusted the States with '[t]he whole subject of the domestic relations of husband and wife.'" *Windsor,* 133 S. Ct. 2675.

As to the *Loving* case cited to by the majority, Roberts stated that it described marriage as "'fundamental to our very existence and survival,' and understanding that necessarily implies procreative component." *Loving v. Virginia,* 388 U.S. 1, 12 (1967). Roberts wrote that recent cases "directly connected the right to marry with the 'right to procreate.'" *Zablocki v. Redhail,* 434 U.S. 374, 386 (1978).

Roberts wrote that "Petitioners first contend that the marriage laws of their States violate the Due Process Clause. The Solicitor General of the United States, appearing in support of petitioners, expressly disowned that position before this Court - - The majority nevertheless resolves these cases for petitioners based almost entirely on the Due Process Clause."

"Stripped of its shiny rhetorical gloss, the majority's argument is that the Due Process Clause gives same-sex couples a fundamental right to marry because it will be good for them and for society. If I were a legislator, I would certainly consider that view as a matter of social policy. But as a judge, I find the majority's position indefensible as a matter of constitutional law."

"Allowing unelected federal judges to select which unenumerated rights rank as 'fundamental' - - and to strike down state laws on the basis of that determination - - raises obvious concerns about the judicial role. Our precedents have accordingly insisted that judges 'exercise the utmost care' in identifying implied fundamental rights, 'lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." *Washington v. Glucksberg,* 521 U.S. 702, 720 (1997).

Roberts stated that the majority relied "primarily on precedents discussing the fundamental 'right to marry.' ... These cases do not hold, of course, that anyone who wants to get married has a constitutional right to do so. They instead require states to justify barriers to marriage as the institution has always been understood.

In addition to their due process argument, petitioners contend that the Equal Protection Clause requires their States to license and recognize same-sex marriages. The majority does not seriously engage with this claim. Its discussion is, quite frankly, difficult to follow. The central point seems to be that there is a 'synergy between' the Equal Protection Clause and the Due Process Clause, and that some precedents relying on one Clause have also relied on the other. *Ante,* at 20. Absent from this portion of the opinion, however, is anything resembling our usual framework for deciding equal protection cases. It is casebook doctrine that the 'modern Supreme Court's treatment of equal protection claims has used a means-ends methodology in which judges ask whether the classification the government is using is sufficiently related to the goals it is pursuing.' G. Stone, L. Seidman, C. Sunstein, M. Tushnet, & P. Karlan, Constitutional Law 453 (7th ed. 2013). The majority's approach today is different:

> 'Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right.' *Ante* at 19.'

The majority goes on to assert in conclusory fashion that the Equal Protection Clause provides an alternative basis for its holding *Ante,* at 22. Yet the majority fails to provide even a single sentence explaining how the

Equal Protection Clause supplies independent weight for its position, nor does it attempt to justify its gratuitous violation of the canon against unnecessarily resolving constitutional questions.

Respect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for religious practice. The majority's decision imposing same-sex marriage cannot, of course, create any such accommodations. The majority graciously suggests that religious believers may continue to 'advocate' and 'teach' their views of marriage. *Ante,* at 27. The First Amendment guarantees, however, the freedom to 'exercise' religion. Ominously, that is not a word the majority uses.

Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage - - when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage. See Tr. Of Oral Arg. On Question 1, at 36-38. There is little doubt that these and similar questions will soon be before this Court. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today.

B. Justice Scalia who joins Justice Thomas in his dissent and joins the Chief Justice in his opinion in full as well.

So it is not of special importance to me what the law says about marriage. It is of overwhelming importance, however, who it is that rules me. Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact - - and the furthest extension one can even imagine - - of the Court's claimed power to create 'liberties' that the Constitution and its Amendments neglect to mention. This practice of Constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.

Until the courts put a stop to it, public debate over same-sex marriage displayed American democracy at its best.

But the Court ends this debate, in an opinion lacking even a thin veneer of law. Buried beneath the mummeries and straining-to-be-memorable passages of the opinion is a candid and startling assertion: No matter what it was the People ratified, the Fourteenth Amendment protects those rights that the Judiciary, in its 'reasoned judgment,' thinks the Fourteenth Amendment ought to protect. That is so because '[t]he generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions ...."

Not surprisingly then, the Federal Judiciary is hardly a cross-section of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east - and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even a Protestant of any denomination.

Justice Scalia ended his dissent with the following observation:

With each decision of ours that takes from the People a question properly left to them - - with each decision that is unabashedly based not on law, but on the 'reasoned judgment' of a bare majority of this Court - - we move one step closer to being reminded of our impotence.

C. Justice Thomas' dissent with whom Justice Scalia joins:

Aside from undermining the political processes that protect our liberty, the majority's decision threatens the religious liberty our Nation has long sought to protect.

It appears all but inevitable that the two will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.

The majority appear unmoved by that inevitability. It makes only a weak gesture toward religious liberty in a single paragraph, *ante* at 27. And even that gesture indicates a misunderstanding of religious liberty in our Nation's tradition. Religious liberty is about more than just the protection for 'religious organizations and persons ... as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.' *Ibid.* Religious liberty is about freedom of action in matters of religion generally, and the scope of that liberty is directly correlated to the civil restraints placed upon religious practice.

D. Dissent of Justice Alito with whom Justice Scalia and Justice Thomas joined.

Until the federal courts intervened, the American people were engaged in a debate about whether their States should recognize same-sex marriage. The question in these cases, however, is not what States should do about same-sex marriage but whether the Constitution answers that question for them. It does not. The Constitution leaves that question to be decided by the people of each State.

To prevent five unelected Justices from imposing their personal vision of liberty upon the American people, the Court has held that 'liberty' under the Due Process Clause should be understood to protect only those rights that are 'deeply rooted in this Nation's history and tradition.' *Washington v. Glucksberg*, 521 U.S. 702, 720-721, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997). And it is beyond dispute that the right to same-sex marriage is not among those rights. See *United States v. Windsor*, 570 U.S. __, __, 133 S. Ct. 2675, 186 L.Ed2d 808, 830 (2013).

Perhaps recognizing how its reasoning may be used, the majority attempts, toward the end of its opinion, to reassure those how oppose same-sex marriage that their rights of conscience will be protected. *Ante*, at 26-27. We will soon see whether this proves to be true. I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.

Justice Alito concluded that:

Most Americans - - understandably - - will cheer or lament today's decision because of their views on the issue of same-sex marriage. But all Americans, whatever their thinking on that issue, should worry about what the majority's claim of power protends.

INSURANCE	**THE INSURED HAS AN OBLIGATION TO READ AN APPLICATION SUBMITTED TO AN INSURER AND THE POLICY AND CANNOT RELY ON ALLEGED MISREPRESENTATIONS OF OTHERS AS TO THE CONTENTS OF THE DOCUMENTS.**
CIVIL PROCEDURE	**THE COURT GRANTED A RULE 5, ALA. R. APP. P. PERMISSIVE APPEAL.**

Alfa Life Ins., Corp., v. Reese,
2015 LEXIS 92 (Ala.) (June 30, 2015)

HOLDINGS:

In an opinion authored by Justice Main and concurred in by Justices Stuart, Bolin, Parker, Wise and Bryan, the Court found as follows:

1. Can a misrepresentation regarding the contents of a document be sufficient in and of itself for a reasonable jury to find an exception to the duty to read? The Court's response was "No."

2. Where there is no evidence of a special relationship between the parties and no evidence that the plaintiff suffered from a disability rendering her unable to discern the contents of the document, can a plaintiff nevertheless be relieved of a duty to read? The Court answered "No."

3. Can information that an agent allegedly obtained in the application process be imputed to the insurance company where the application agreement states, "No information or knowledge obtained by any agent ... in connection with this Application shall be construed as having been made known to or binding upon the Company?" The Court answered "No."

OUTCOME:

The Court reversed the trial court's order denying the defendants' summary

judgment motion as to all of the plaintiff's remaining claims and as to Alfa's counterclaim seeking rescission of the life insurance policy and remanded the cause for proceedings consistent with its opinion.

Justice Shaw concurred in the result.

Justice Murdock dissented and is writing a dissent that has not yet been provided.

Chief Justice Moore recused himself.

INSURANCE

UM COVERAGE

RIGHT TO OPT OUT **ALFA DEMONSTRATED A CLEAR LEGAL RIGHT TO HAVE ITS MOTION TO REALIGN THE PARTIES GRANTED AND TO ALLOW IT TO OPT OUT OF THE UNDERLYING LITIGATION AND WAS NOT REQUIRED TO RELEASE ITS RIGHT OF SUBROGATION PRIOR TO MAKING THE ELECTION.**

Ex parte Alfa Mutual General Insurance Company (In re: Mark D. Trotter v. Alfa Mutual General Insurance Company),

2015 LEXIS 85 (Ala.)(June 26, 2015)

HOLDINGS:

In this case authored by Justice Shaw, the Court found as follows:

1. Alfa had a clear legal right to have its motion to realign the parties granted and to allow it to opt out of the underlying litigation;

2. By opting out, Alfa agrees to be bound by the decisions of the fact finder on the issues of liability and damages;

3. Alfa had the discretion to hire an attorney to represent the uninsured motorist defendant; and

4. Alfa could continue to prosecute the subrogation claim asserted in its third-party complaint.

Justices Stuart, Bolin, Parker, Main, Wise and Bryan concurred.

Justice Murdock and Chief Justice Moore concurred in the result.

Justice Murdock writing the special concurrence stated that to the extent the main opinion suggested that the result in the case depends upon a distinction between under insured motorist cases and uninsured motorist cases he declined to concur in that reasoning.

STATE REGULATION OF LEGAL ETHICS AND JUDICIAL CONDUCT

THE STATE OF FLORIDA HAD A COMPELLING INTEREST IN ADOPTING A JUDICIAL CONDUCT CANON PROHIBITING CANDIDATES AND JUDICIAL ELECTIONS FROM PERSONALLY SOLICITING CAMPAIGN FUNDS.

Williams-Yulee v. Fla. Bar,
135 S. Ct. 1656; 191 L.Ed. 2d 570; 2015 U.S. LEXIS 2983 (April 29, 2015)

HOLDINGS:

In a case authored by Chief Justice Roberts, the Court found as follows:

1. The State of Florida had a compelling interest in adopting Fla. Code Jud. Conduct Canon 7C(1), which prohibited candidates in judicial elections from personally soliciting campaign funds. The Canon was adopted to promote the state's interests in protecting the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary;

2. Canon 7C(1) was not fatally underinclusive, as it aimed squarely at the conduct most likely to undermine public confidence in the integrity of the judiciary - - personal requests for money by judicial candidates - - and it applied evenhandedly, regardless of viewpoint or means of solicitation; and

3. Canon 7C(1) was narrowly tailored to serve the state's compelling interest and therefore did not violate the *First Amendment*.

4. The Court affirmed the decision of the Florida Supreme Court upholding the disciplinary sanctions finding that the First Amendment did not protect the Judge who mailed and posted online a letter soliciting financial contributions to her campaign for judicial office.

OUTCOME:

Judgment affirmed. 5-4 decision; 2 concurrences, 2 dissents.

Chief Justice Roberts delivered the opinion of the Court, except as to Part II.

Justices Breyer, Sotomayor and Kagan joined that opinion in full, and Justice Ginsburg joined except as to Part II.

Justice Breyer filed a concurring opinion.

Justice Ginsburg filed an opinion concurring in part and concurring in the judgment, in which Justice Breyer joined as to Part II.

Justice Scalia filed a dissenting opinion, in which Justice Thomas joined.

Justices Kennedy and Alito filed dissenting opinions.

STATE - IMMUNITY UNDER THE VOLUNTEER SERVICE ACT

THE COURT ANALYZED THE IMMUNITY OF THE CHIEF OF THE FIRE DEPARTMENT AS IS APPLIED TO STATE AGENT IMMUNITY FINDING THAT THE CHIEF DID NOT ACT OUTSIDE THE SCOPE OF HIS DUTIES WITH THE DEPARTMENT AND DID NOT ACT WILLFULLY OR WANTONLY IN DOING SO.

In re Westbrook v. Dixon Mills Volunteer Fire Dep't, Inc.,
2015 LEXIS 59 (Ala.) (May 15, 2015)

ISSUE:

Whether petitioners, a volunteer fire department and its assistant fire chief, were entitled to a writ of mandamus ordering the trial court vacate its order denying their motion for summary judgment on plaintiff motorists' negligence claims.

HOLDINGS:

In a case authored by Justice Bolin, the Court found as follows:

1. The chief was entitled to immunity under the Volunteer Service Act, *Ala. Code § 6-5-336,* because he acted in good faith and within the scope of his volunteer-firefighter duties with the department, a nonprofit organization, and although he knowingly drove a fire truck into an intersection where a collision occurred, there was no evidence he acted willfully or wantonly in doing so; and

2. However, the department was not entitled to immunity because *§ 6-5-336(e)* of the Act expressly foreclosed it from vicariously sharing immunity with the firefighters based on the master-servant relationship.

OUTCOME:

The Supreme Court granted the petition in part, denied it in part and issued the writ.

NT IMMUNITY THE CLAIMS ASSERTED AGAINST A STATE PSYCHIATRIST WERE BARRED BY THE DOCTRINE OF STATE-AGENT IMUNITY.

Ex parte Kozlovski, 2015 LEXIS 53 (Ala.) (April 24, 2015)

HOLDINGS:

In a case authored by Justice Main with which Chief Justice Moore and Justices Stuart, Bolin, Shaw, Wise and Bryan concurred, the Court found as follows:

1. A state psychiatrist was entitled to a writ of mandamus, directing a trial court to enter a summary judgment in her favor in a wrongful-death action brought against her by a deceased patient's estate administrator, arising from the patient's death after discharge, because the claim was barred by the doctrine of State-agent immunity; and

2. The psychiatrist met her burden of showing that the claims arose from a function that entitled her to immunity, and the deceased patient's estate administrator failed to show an exception to such immunity applied, as it was not apparent that the psychiatrist violated any of the rules, regulations, or policies.

OUTCOME:

Petition for writ of mandamus granted; writ issued.

Justice Parker dissented without opinion.

STATE AGENT IMMUNITY

THE DEFENDANT OFFICER WAS PERFORMING A DISCRETIONARY FUNCTION AND DID NOT FAIL TO COMPLY WITH THE DEPARTMENT'S POLICIES AND PROCEDURES AND HIS ACTIONS AT THE TIME OF THE INJURY WERE NOT SHOWN TO BE UNREASONABLE.

Ex parte Brown, 2015 LEXIS 64 (Ala.) (May 22, 2015)

HOLDINGS:

In a case authored by Justice Stuart, the Court found as follows:

1. The trial court erred in denying a police officer's motion for summary judgment as to an estate administrator's negligent and wanton pursuit claims; he had statutory immunity under *Ala. Code § 6-5-338* and state-agent immunity because he established that the alleged misconduct occurred in performance of a discretionary function within scope of his law enforcement duties, and the administrator did not show that he failed to comply with the police department's pursuit policy and procedure; and

2. The officer was entitled to summary judgment on the claim that he violated *Ala. Code § 32-5A-7(c)* and thus lost state-agent immunity, as there was not substantial evidence that his high-speed pursuit was unreasonable, that he acted without due regard for the safety of others, or that he proximately caused the collision at issue.

OUTCOME:

The Supreme Court issued a writ of mandamus.