

SUPREME COURT OF ALABAMA

Michael Barry d/b/a Michael Barry Properties, Inc. v. The D.M. Drennen and Emma Houston Drennen Memorial Trust of Saint Mary's Church et al.

982 So. 2d 478 (Ala. 2007) · No. 1060752 · Decided September 14, 2007

SUMMARY

The Alabama Supreme Court reviewed Michael Barry's challenge to the vacation of a Birmingham alley. The court held that the 30-day appeal limitation for challenging an alley vacation could not be applied at the pleading stage to an alleged abutting landowner who had not received the statutory notice, and that dismissal against the Trust, Church, Rubaiyat, and City was premature. It affirmed dismissal of the City Council members sued solely in their official capacities and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Cobb, Chief Justice; Stuart, Justice; Bolin, Justice; Murdock, Justice
JURISDICTION	Alabama
DECIDED	September 14, 2007
DOCKET	1060752
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Barry appealed from a final judgment dismissing his action challenging the vacation of a Birmingham alley. The Supreme Court of Alabama affirmed dismissal as to the City Council members sued in their official capacities, reversed dismissal as to the Trust, Church, Rubaiyat, and City, and remanded.
STANDARD OF REVIEW	The court reviewed the Rule 12(b)(6) dismissal de novo, viewing the complaint's allegations most strongly in Barry's favor and considering whether he could prove any set of circumstances entitling him to relief. Materials outside the pleadings generally convert a motion to dismiss into a motion for summary judgment.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.

PARTIES

Michael Barry d/b/a Michael Barry Properties, Inc. v. The D.M. Drennen and Emma Houston Drennen Memorial Trust of Saint Mary's Church, Saint Mary's-on-the-Highlands Episcopal Church, Rubaiyat Trading Company, Ltd., City of Birmingham, Carol Smitherman, Miriam Witherspoon, Joel Montgomery, Carol Reynolds, Valerie Abbott, Maxine Parker, William Bell, Steven Hoyt, Roderick Royal

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QUESTIONS PRESENTED

1. Whether Barry's action challenging the alley vacation was barred by the 30-day appeal period in Alabama Code § 23-4-5 when he alleged that he was an abutting landowner who did not receive the statutory notice required by § 23-4-2.
2. Whether the defendants' reliance on a tax map and other materials outside the complaint required conversion of the motions to dismiss into motions for summary judgment.
3. Whether Barry was required to serve the Alabama Attorney General under § 6-6-227 because he allegedly challenged the constitutionality of a municipal vacation resolution or statute.
4. Whether the City Council members sued only in their official capacities were entitled to dismissal.

HOLDINGS

1. The 30-day appeal limitation in Alabama Code § 23-4-5 cannot be applied to an alleged abutting landowner who never received the notice required by § 23-4-2. Because Barry alleged that his property was adjacent to the alley, the complaint stated a potentially viable claim and could not be dismissed as untimely at the pleading stage.
2. The trial court erred by dismissing the action without treating the defendants' reliance on a tax map and other evidentiary materials as requiring conversion to a summary-judgment proceeding and without allowing discovery relevant to Barry's alleged status as an abutting landowner.
3. Barry was not required to serve the Alabama Attorney General because he challenged the application and enforcement of the statutory notice and appeal provisions, rather than the constitutionality of a statute, ordinance, or franchise itself.
4. The City Council members were properly dismissed because they were sued only in their official capacities, and Barry conceded that they were entitled to dismissal.

KEY QUOTATIONS

“Because there was a prohibition against vacation of a public road at common law, statutes authorizing such a vacation are in derogation of the common law and therefore must be strictly construed.” (482)

“After reviewing the allegations in Barry's complaint and construing them in his favor, we conclude that it is conceivable that Barry could prove that he is an abutting landowner and, therefore, that he was entitled to the statutory notice of the hearing on the proposed vacation of the alley required by § 23-4-2.” (483)

“The trial court's order dismissing the action as to the Trust, the Church, Rubaiyat, and the City was premature; a fact-intensive analysis is required to determine whether the vacation procedures set forth in § 23-4-2 were complied with.” (484)

FACTUAL BACKGROUND

The Trust, Saint Mary's-on-the-Highlands Episcopal Church, and Rubaiyat owned property abutting a 20-foot-wide alley in Birmingham. They executed a declaration of vacation, and the Birmingham City Council approved the vacation by resolution no. 1131-05 on May 31, 2005. Barry alleged that he owned nearby property and possessed an easement for handicap-accessible ingress and egress that abutted the alley, but he did not receive the statutory notice allegedly required for abutting landowners.

PROCEDURAL HISTORY

The Birmingham City Council approved the vacation of a public alley by resolution no. 1131-05. Barry filed a declaratory action alleging that the vacation was void because the City failed to comply strictly with statutory requirements and alleging an easement affecting the alley. The defendants moved to dismiss or alternatively for summary judgment, asserting that the action was barred by the 30-day appeal period in Alabama Code § 23-4-5. The trial court dismissed the action as untimely, and Barry appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Proceed with further proceedings consistent with the opinion, including a fact-intensive determination whether the statutory vacation procedures in § 23-4-2 were complied with. The dismissal remains affirmed as to the City Council members sued in their official capacities.

CASES CITED

- Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993)
- Beckerle v. Moore, 909 So. 2d 185, 186-87 (Ala. 2005)
- Ex parte Squires, 960 So. 2d 661 (Ala. 2006)
- Bratton v. City of Florence, 688 So. 2d 233 (Ala. 1996)
- Mobile County Department of Human Resources v. Mims, 666 So. 2d 22, 26 (Ala. Civ. App. 1995)
- Holland v. City of Alabaster, 624 So. 2d 1376, 1378 (Ala. 1993)

- Bownes v. Winston County, 481 So. 2d 362 (Ala. 1985)
- Dobbs & Sons, Inc. v. Northcutt, 819 So. 2d 607, 609 (Ala. 2001)
- Donoghue v. American National Insurance Co., 838 So. 2d 1032, 1035 (Ala. 2002)
- Wesson v. McCleave, Roberts, Shields & Green, P.C., 810 So. 2d 652, 656 (Ala. 2001)
- Hornsby v. Sessions, 703 So. 2d 932, 937-38 (Ala. 1997)
- Newson v. Protective Industrial Insurance Co. of Alabama, 890 So. 2d 81, 83-84 (Ala. 2003)
- Wilson v. First Union National Bank of Georgia, 716 So. 2d 722, 726 (Ala. Civ. App. 1998)
- GFF Corp. v. Associated Wholesale Grocers, Inc., 130 F.3d 1381, 1384-85 (10th Cir. 1997)
- Patton v. Black, 646 So. 2d 8, 10 (Ala. 1994)

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