

SUPREME COURT OF ALABAMA

Ex parte Wharfhouse Restaurant and Oyster Bar, Inc.

796 So. 2d 316 (Ala. 2001) · No. 1991865 · Decided April 6, 2001

SUMMARY

The Alabama Supreme Court granted Wharfhouse Restaurant and Oyster Bar, Inc.'s petition for a writ of mandamus. The court held that the trial court had not entered a final judgment disposing of Wharfhouse's claims against McInnis and directed the trial court either to enter such a judgment or set the claims for a pretrial conference. The writ was issued without prejudice to McInnis's right to seek involuntary dismissal under Rule 41(b), Ala. R. Civ. P., for failure to prosecute or appear at trial.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Moore, Chief Justice; Houston, Justice; See, Justice; Brown, Justice; Johnstone, Justice; Harwood, Justice; Woodall, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	April 6, 2001
DOCKET	1991865
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Wharfhouse petitioned for a writ of mandamus directing the Montgomery Circuit Court either to set its remaining claims against McInnis for a pretrial conference under Rule 16(a), Alabama Rules of Civil Procedure, or to set them for trial.
STANDARD OF REVIEW	Mandamus requires a clear legal right to the requested relief; the court examined whether the trial court had entered a final judgment terminating Wharfhouse's claims under Rule 58(b), Alabama Rules of Civil Procedure.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential
PARTIES	Wharfhouse Restaurant and Oyster Bar, Inc. v. McInnis Corporation

TOPICS

- final judgment rule
- appellate procedure
- civil procedure
- commercial litigation
- remedies

PRACTICE AREAS

Civil procedure

Appellate procedure

Commercial litigation

Construction law

Remedies

QUESTIONS PRESENTED

1. Whether the trial court's order denying Wharfhouse's motion for partial summary judgment, which stated that Wharfhouse had failed to prosecute and appear at trial, constituted a final judgment terminating Wharfhouse's claims.
2. Whether Wharfhouse was entitled to a writ of mandamus directing the trial court either to enter a final judgment disposing of its claims or to set those claims for a pretrial conference or trial.
3. Whether the mandamus relief should be issued without prejudice to McInnis's right to seek involuntary dismissal under Rule 41(b), Alabama Rules of Civil Procedure.

HOLDINGS

1. An order denying a motion for summary judgment is not a final judgment disposing of the plaintiff's claims when the order does not clearly adjudicate those claims and the case record does not show a final judgment.
2. Wharfhouse's claims against McInnis had not been fully adjudicated because no final judgment disposed of those claims.
3. Wharfhouse was entitled to a writ of mandamus directing the trial court either to enter a final judgment disposing of Wharfhouse's claims or to set the case for a pretrial conference.

KEY QUOTATIONS

“In order to terminate a civil action filed in an Alabama court, the court must enter a final judgment in that action.” (at 320)

“Considering the entire record, we conclude that Wharfhouse's claims against McInnis have not been fully adjudicated.” (at 321)

FACTUAL BACKGROUND

Wharfhouse owned the restaurant property allegedly damaged during McInnis's construction of the Dog River Bridge. After an earlier appeal left certain inverse-condemnation and negligence and wantonness claims against McInnis unresolved, the trial court set the consolidated cases for trial. Wharfhouse did not appear at trial, but the trial court never entered a final judgment dismissing Wharfhouse's claims or otherwise adjudicating them on the merits.

PROCEDURAL HISTORY

Wharfhouse's property-damage claims arose from construction of the Dog River Bridge and were consolidated with related claims brought by the Barbers and Ben Jernigan. The trial court entered summary judgments on various claims; on an earlier appeal, the Alabama Supreme Court reversed in part and remanded Wharfhouse's remaining claims against McInnis. Wharfhouse did not appear when the case was called for trial, and the trial

court later denied Wharfhouse's motion for partial summary judgment, stating that Wharfhouse had failed to prosecute and appear, but did not enter an order dismissing the claims or otherwise finally adjudicating them. After denying reconsideration and failing to set the case for a pretrial conference, the trial court was challenged by mandamus petition.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The writ requires the Montgomery Circuit Court either to enter a final judgment disposing of Wharfhouse's claims, thereby creating an appealable order on the merits, or to set the case for a pretrial conference. The writ is issued without prejudice to McInnis's right to seek involuntary dismissal under Rule 41(b), Alabama Rules of Civil Procedure.

CASES CITED

- Barber v. State, 703 So. 2d 314 (Ala. 1997)
- Ex parte P & H Construction Co., 723 So. 2d 45 (Ala. 1998)
- Link v. Wabash Railroad, 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962)
- City of Birmingham v. City of Fairfield, 396 So. 2d 692 (Ala. 1981)
- Dudley v. State Department of Human Resources, 555 So. 2d 1121 (Ala. Civ. App. 1989)
- Purnell v. Covington County Board of Education, 519 So. 2d 560 (Ala. Civ. App. 1987)
- Cates v. Bush, 293 Ala. 535, 307 So. 2d 6 (Ala. 1975)

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