

SUPREME COURT OF ALABAMA

Carlton v. Hollon

4 So. 3d 439 (Ala. 2008) · No. 1070823 · Decided August 29, 2008

SUMMARY

The Alabama Supreme Court reversed a summary judgment entered for property owners in an action involving erosion, drainage, silt, and other discharge allegedly affecting adjacent property. The court held that a current landowner may be liable for failing to correct a condition created by a previous owner when the condition causes injury and the current owner has had a reasonable time to remedy it. The plaintiffs' affidavit and the defendants' admissions created a genuine issue of material fact requiring remand.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Stuart, Justice; Cobb, C.J.; See, J.; Woodall, J.; Smith, J.; Bolin, J.; Parker, J.; Murdock, J.; Lyons, J.
JURISDICTION	Alabama
DECIDED	August 29, 2008
DOCKET	1070823
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Rule 54(b)-certified summary judgment entered for the Hollons on claims alleging negligence, private nuisance, trespass, interference with the natural flow of water, and requesting injunctive relief.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court. The record must be viewed in the light most favorable to the nonmovant, with reasonable doubts resolved against the movant. Summary judgment is proper only when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law; once the movant makes a prima facie showing, the nonmovant must present substantial evidence creating a genuine issue of material fact.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Alabama.

PARTIES

Vee Evelyn Carlton, Kathryn Mae Hutchinson v. Amanda Webb
Hollon, George Alexander Hollon

TOPICS

nuisance trespass negligence summary judgment civil procedure

PRACTICE AREAS

Torts Real property Civil procedure Remedies

QUESTIONS PRESENTED

1. Whether summary judgment was proper when the current landowners did not create the allegedly injurious condition but allegedly knew of the condition, failed to remedy it, and substantial evidence indicated continuing injury to adjacent property.
2. Whether the plaintiffs presented substantial evidence creating a genuine issue of material fact regarding the Hollons' liability for damage caused by conditions on their property.

HOLDINGS

1. A current landowner may be liable for failing to correct a condition on the land that was created by a previous landowner when the condition injures an adjacent landowner's property and the current landowner has had a reasonable time to correct it.
2. Summary judgment for the Hollons was improper because the plaintiffs presented substantial evidence creating a genuine issue of material fact as to whether the Hollons' failure to remedy conditions on their property caused injury for which they could be liable.

KEY QUOTATIONS

“In Sloss Sheffield Steel & Iron Co. v. Nance, 216 Ala. 237, 113 So. 50 (1927), this Court held that a landowner may be held liable for failing to correct a condition on the landowner's property that was created by the previous landowner when that condition causes injury to an adjacent landowner's property, and the current landowner has had a reasonable time to correct the condition.” (443)

“Here, Carlton and Hutchinson have presented substantial evidence to overcome the summary judgment.” (443)

FACTUAL BACKGROUND

The Webbs removed timber and altered the surface of property that was later deeded to the Hollons, allegedly changing the natural drainage pattern and increasing the flow of silt and other discharge onto Carlton and Hutchinson's adjacent property. The Hollons acquired the property in July 2005 and testified that they had not cut timber, altered surface features, diverted drainage, or otherwise disturbed the property after acquiring it. Carlton submitted an affidavit stating that erosion and the flow of silt and other materials from the Hollons'

property were continuing and worsening, and deposition excerpts showed that the Hollons knew of drainage problems but had not taken corrective action.

PROCEDURAL HISTORY

Carlton and Hutchinson sued the Webbs and the Hollons in the Autauga Circuit Court, alleging that alterations to the Hollons' property caused continuing erosion, silt, and drainage damage to their adjacent property. The Hollons moved for summary judgment, arguing that they had not made the alterations and had not disturbed the property after acquiring it. The circuit court entered summary judgment for the Hollons on all claims and certified the judgment as final under Rule 54(b). The Supreme Court of Alabama reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings consistent with the opinion.

CASES CITED

- Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794 (Ala. 1989)
- West v. Founders Life Assur. Co. of Florida, 547 So. 2d 870 (Ala. 1989)
- Ex parte Lumpkin, 702 So. 2d 462 (Ala. 1997)
- Hanners v. Balfour Guthrie, Inc., 564 So. 2d 412 (Ala. 1990)
- Payton v. Monsanto Co., 801 So. 2d 829 (Ala. 2001)
- Ex parte Alfa Mut. Gen. Ins. Co., 742 So. 2d 182 (Ala. 1999)
- Baugus v. City of Florence, 985 So. 2d 413 (Ala. 2007)
- Sloss Sheffield Steel & Iron Co. v. Nance, 216 Ala. 237, 113 So. 50 (1927)

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