

ALABAMA COURT OF CIVIL APPEALS

Riverstone Development Co. v. Nelson

91 So. 3d 678 (Ala. Civ. App. 2012) · Decided March 9, 2012

SUMMARY

The Alabama Court of Civil Appeals held that the trial court erred by treating a joint motion to dismiss as a notice of voluntary dismissal under Rule 41(a)(1). Because answers had already been filed and the motion was not signed by all parties who had appeared, dismissal was subject to the court's discretion under Rule 41(a)(2). The judgment was reversed and the case remanded.

CASE DETAILS

COURT	Alabama Court of Civil Appeals
WRITING FOR THE COURT	Woodall, Justice; Woodall; Malone, C.J.; Bolin; Murdock; Main
JURISDICTION	Alabama
DECIDED	March 9, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Riverstone Development Co. and Southern Heritage, LLC, which had intervened as defendants, appealed from a judgment dismissing the action under Rule 41(a)(1), Ala. R. Civ. P., after the trial court construed a joint motion to dismiss as a notice of dismissal.
STANDARD OF REVIEW	De novo review applies to whether a dismissal under Rule 41(a)(1) is effective because that issue is a question of law. A dismissal under Rule 41(a)(2) is reviewed for failure to exercise, abuse of, or exercise of unpermitted discretion.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Riverstone Development Co., Inc., Southern Heritage, LLC v. Roy T. Nelson

TOPICS

- civil procedure
- motions to dismiss
- specific performance real estate
- title disputes
- commercial litigation

PRACTICE AREAS

- Civil procedure
- Real estate litigation
- Commercial litigation

QUESTIONS PRESENTED

1. Whether the trial court could construe a joint motion to dismiss signed by only the plaintiff and one defendant as a Rule 41(a)(1) notice of dismissal.
2. Whether the requirements for a stipulation or notice of voluntary dismissal under Rule 41(a)(1), Ala. R. Civ. P., were satisfied after adverse parties had filed answers.
3. If Rule 41(a)(1) did not apply, whether dismissal had to be considered under Rule 41(a)(2), subject to the trial court's discretion.

HOLDINGS

1. The joint motion did not qualify as an effective Rule 41(a)(1) dismissal because it was not a stipulation signed by all parties who had appeared, and the action was no longer at the stage at which a plaintiff could unilaterally file a notice of dismissal.
2. When the requirements of Rule 41(a)(1) are not met, dismissal at the plaintiff's instance must proceed under Rule 41(a)(2), which requires a court order and permits the trial court to impose proper terms and conditions.

KEY QUOTATIONS

“The purpose of Rule 41(a) is to facilitate voluntary dismissals but to limit them to an early stage of the proceedings before issue is joined.” (680)

“If the conditions of Rule 41(a)(1) are satisfied, dismissal is automatic, that is, “[n]o order of the court is required.... [and] the notice [of dismissal] terminates the action....” (680-81)

“In so doing, the trial court inexplicably overlooked Fieldstone’s answer, which clearly appeared of record, not to mention the similarly appearing answers of Garner and Heritage and Riverstone, which were filed after those entities were expressly permitted to intervene and before the filing of the motion to .dismiss.” (681)

FACTUAL BACKGROUND

Roy T. Nelson claimed that he was the high bidder for Tract 10 of Jones's Cove Estates and sued Fieldstone Land Company for specific performance requiring Fieldstone to convey the property. Fieldstone later conveyed Tract 10 to Garner Properties, which intervened and claimed sole ownership. Riverstone and Southern Heritage, asserting current and former ownership of the adjacent Pinnacle Cove Subdivision, claimed that they had permission to construct an access road across Tract 10 and that Nelson's assertion of rights in Tract 10 impaired development and marketing of Pinnacle. Nelson and Fieldstone then sought dismissal while the intervening defendants had already filed answers and Riverstone and Heritage sought to assert counterclaims.

PROCEDURAL HISTORY

Roy T. Nelson filed an action against Fieldstone Land Company, LLC, seeking specific performance of an alleged agreement to convey land. Garner Properties, LLC, later intervened and asserted an ownership counterclaim; Riverstone and Heritage then intervened based on their claimed interests in adjacent property and an access road across the disputed tract. After Nelson and Fieldstone filed a joint motion to dismiss, Riverstone

and Heritage opposed dismissal and sought leave to file counterclaims. The trial court denied leave to file the counterclaims and dismissed the action, treating the joint motion as a Rule 41(a)(1) notice of dismissal. The Court of Civil Appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must exercise the discretion proper for consideration of the motion to dismiss under Rule 41(a)(2), Ala. R. Civ. P.

CASES CITED

- Greene v. Town of Cedar Bluff, 965 So. 2d 773, 777-79 (Ala. 2007)
- Matthews v. Gaither, 902 F.2d 877, 879 (11th Cir. 1990)
- Milliken v. South Realty Co., 628 So. 2d 928, 930 (Ala. Civ. App. 1993)
- Bevill v. Owen, 364 So. 2d 1201, 1203 (Ala. 1979)