

SUPREME COURT OF ALABAMA

Fulgham v. West

797 So. 2d 1070 (Ala. 2001) · Decided January 12, 2001

SUMMARY

The Alabama Supreme Court denied James Troy West’s petition for a writ of mandamus seeking to compel transfer of his automobile-accident case to the jury-trial docket. The court held that West waived his right to a jury trial by failing to make a timely demand and could not rely on his codefendant’s later jury demand under Rule 38(b), Ala. R. Civ. P.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Hooper, Chief Justice; Maddox, Justice; Cook, Justice; Lyons, Justice; Johnstone, Justice
JURISDICTION	Alabama
DECIDED	January 12, 2001
DISPOSITION	writ_denied
PROCEDURAL POSTURE	James Troy West, Jr., petitioned the Supreme Court of Alabama for a writ of mandamus directing the Tuscaloosa Circuit Court to transfer his automobile-accident case to the jury-trial docket after the circuit court denied his motion for a jury trial.
STANDARD OF REVIEW	Mandamus is available only to correct a clear legal right and a clear legal error; the petitioner must show that the trial court improperly denied a timely jury demand under Rule 38(b), Ala. R. Civ. P.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential
PARTIES	James Troy West, Jr. v. Travis Fulgham

TOPICS

- appellate procedure
- writ of certiorari
- civil procedure
- preservation of error
- final judgment rule

PRACTICE AREAS

- Civil procedure
- Appellate procedure

QUESTIONS PRESENTED

1. Whether West could rely on his codefendant Allstate's jury demand even though West had already answered without making his own demand.
2. Whether West's May 5, 2000, jury demand was timely under Rule 38(b), Ala. R. Civ. P.
3. Whether the Tuscaloosa Circuit Court improperly denied West's motion for a jury trial so as to warrant mandamus relief.

HOLDINGS

1. A party who fails to demand a jury within the time allowed by Rule 38(b) may not rely on a subsequent jury demand made by a codefendant.
2. West's May 5, 2000, jury demand was untimely because he was required to demand a jury within 30 days after filing his September 9, 1999, answer.

KEY QUOTATIONS

"Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than thirty (30) days after the service of the last pleading directed to such issue." (797 So. 2d at 1071)

"Applying the principles of Staik to this case, we conclude that West could not rely on his codefendant's subsequent jury demand." (797 So. 2d at 1072)

FACTUAL BACKGROUND

West was sued by Travis Fulgham and Eunice Prewitt following an automobile accident. West answered on September 9, 1999, without demanding a jury, while codefendant Allstate later filed an answer containing a jury demand. The case was placed on the nonjury docket, and West did not object when the trial was scheduled and later reset twice. West first demanded a jury trial on May 5, 2000.

PROCEDURAL HISTORY

Fulgham and Prewitt sued West and Allstate in the Tuscaloosa Circuit Court. Allstate's claims and Prewitt's claims were dismissed with prejudice. West answered without demanding a jury, and the case was placed on the nonjury docket. After two agreed trial continuances, West made his first jury demand, which the circuit court denied. The Supreme Court of Alabama denied West's petition for mandamus.

DISPOSITION

writ_denied

CASES CITED

- Hester v. Posey, 684 So. 2d 1347 (Ala. Civ. App. 1996)
- Staik v. Jefferson Federal Sav. & Loan Ass'n, 434 So. 2d 763 (Ala. 1983)

- *Bentler v. Bank of America Nat'l Trust & Sav. Ass'n*, 959 F.2d 138 (9th Cir. 1992)

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