

SUPREME COURT OF ALABAMA

Cynthia Gerhard and Elkton S. Gerhard III v. Elkton S. Gerhard, Jr.

SC-2025-0633 · No. SC-2025-0633 · Decided March 13, 2026

SUMMARY

The Supreme Court of Alabama dismissed an appeal from an order authorizing the sale of jointly owned property for division of the proceeds. The court held that the order was final for purposes of appeal but that the appellants waived appellate review by stipulating to the sale without reserving their right to appeal and without seeking to set aside the consent judgment for fraud or mistake.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Sellers, J.; Stewart, C.J.; Wise, J.; Cook, J.; Parker, J.
JURISDICTION	Supreme Court of Alabama
DECIDED	March 13, 2026
DOCKET	SC-2025-0633
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a Mobile Circuit Court order authorizing the sale of real property for division of the proceeds pursuant to the parties' stipulations.
STANDARD OF REVIEW	The appeal was dismissed as waived based on the parties' stipulation and consent to the judgment; the court also addressed de novo the legal issue whether the sale-for-division order was final for purposes of appeal.
PRECEDENTIAL VALUE	published
PARTIES	Cynthia Gerhard, Elkton S. Gerhard III v. Elkton S. Gerhard, Jr.

TOPICS

appellate procedurewaiverfinal judgment rulepartitionreal estate

PRACTICE AREAS

Civil procedureAppellate procedureReal propertyPartition and sale for divisionAppellate waiver

QUESTIONS PRESENTED

1. Whether the Mobile Circuit Court's order directing a sale for division was a final judgment appealable before the sale was completed.
2. Whether appellants waived their right to appeal by stipulating to and consenting to the order authorizing the sale for division without reserving appellate rights.
3. Whether appellants' pro se status, asserted disabilities, lack of knowledge of procedural requirements, or claimed lack of notice excused the waiver.

HOLDINGS

1. An order directing the sale of property for division, even when the trial court retains jurisdiction to determine later adjustments and distribution of sale proceeds, is a final judgment for purposes of appeal when it ascertains the parties' rights and settles the equities.
2. Appellants waived their right to appeal an order entered pursuant to their stipulations and consent because they did not reserve appellate rights and did not seek to set aside the order for fraud or mistake.
3. Pro se status, asserted reading and learning disabilities, lack of knowledge that a motion to reconsider or amend might be required, and claimed lack of notice did not excuse appellants' waiver where the record showed they received the relevant pleadings and understood and agreed to the sale.

KEY QUOTATIONS

"This Court has held that generally consent judgments are not reviewable on appeal because the consent of the parties waives prior irregularities and constitutes a release of errors." (5)

"[A] consent judgment is in the nature of a contract or a binding obligation between parties and can be set aside only upon a showing of fraud or mistake." (5)

"The operation of the courts of this state is governed by rules which are no more forgiving to a pro se litigant than to one represented by counsel." (6)

FACTUAL BACKGROUND

Elkton Gerhard, Jr., and his son Russ jointly acquired the property by warranty deed with rights of survivorship in 2013. The father later leased the property to Elkton III and Cynthia, who defaulted on the month-to-month lease. During the ejectment litigation, Russ executed an unrecorded quitclaim deed purporting to convey his interest to Elkton III and Cynthia. The parties subsequently stipulated that Elkton III and Cynthia could not purchase the father's one-half interest and that the property should be sold with the net proceeds divided.

PROCEDURAL HISTORY

The father initially sued to eject Elkton III and Cynthia from property he jointly owned with Russ Gerhard. After learning that Russ had executed an unrecorded quitclaim deed to Elkton III and Cynthia, the father amended his claims to seek a sale for division and dismissal of the deed-related claim. Following a hearing, the parties stipulated that the property should be sold and the proceeds divided, and the Mobile Circuit Court entered an

order approving the sale on August 1, 2025. Elkton III and Cynthia appealed pro se without moving to set aside the order for fraud or mistake.

DISPOSITION

dismissed

CASES CITED

- Jetton v. Jetton, 502 So. 2d 756, 758-59 (Ala. 1987)
- Carter v. Mitchell, 225 Ala. 287, 293, 142 So. 514, 519 (1932)
- Hanson v. Hearn, 521 So. 2d 953, 954 (Ala. 1988)
- Black v. Allen, 587 So. 2d 349, 349 (Ala. Civ. App. 1991)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/supreme-court-of-alabama-supreme-court-of-alabama/2026/cynthia-gerhard-and-elkton-s-gerhard-iii-v-elkton-s-gerhard-he7gqfdx>