

SUPREME COURT OF ALABAMA

Cecil E. Cameron v. Laythron Tillis and Ethel Tillis

952 So. 2d 352 (Ala. 2006) · No. 1040493 · Decided August 18, 2006

SUMMARY

The Supreme Court of Alabama held that a default judgment against Cecil E. Cameron was void because service by publication was invalid. At the time publication began, Alabama Rule of Civil Procedure 4.3 permitted such service only for resident defendants, and the amended rule allowing service on nonresident defendants had not yet taken effect. The court reversed and remanded, concluding that Cameron was entitled to relief from the default judgment.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Nabers, Chief Justice; Woodall, Justice; Smith, Justice; Parker, Justice
JURISDICTION	Alabama
DECIDED	August 18, 2006
DOCKET	1040493
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cameron appealed from the Coffee Circuit Court's denial of his motions for relief from a default judgment entered after service by publication.
STANDARD OF REVIEW	Ordinarily, an order granting or denying relief from a default judgment is reviewed for clear abuse of discretion. When the requested relief turns on the validity of the judgment, however, discretion does not apply: a void judgment must be set aside, while a valid judgment must stand.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Alabama
PARTIES	Cecil E. Cameron v. Laythron Tillis, Ethel Tillis

TOPICS

- service of process
- default judgment
- personal jurisdiction
- civil procedure
- appellate procedure

PRACTICE AREAS

civil procedure

torts

appellate procedure

QUESTIONS PRESENTED

1. Whether service by publication on Cameron was authorized under the version of Alabama Rule of Civil Procedure 4.3(c) in effect when the service began.
2. Whether the failure to complete four consecutive weeks of valid publication rendered service invalid and deprived the trial court of personal jurisdiction.
3. Whether the resulting default judgment was void and therefore had to be set aside.

HOLDINGS

1. Because the service-by-publication order was entered before the August 1, 2004 amendment deleting the resident-defendant limitation, publication against a nonresident defendant was invalid for the first two publication dates, July 22 and July 29, 2004.
2. Service was not validly published for four consecutive weeks because the first two publications were invalid under the version of Rule 4.3(c) applicable at the time.
3. Because Cameron was not properly served, the trial court lacked personal jurisdiction over him and the default judgment was void; Cameron was therefore entitled to relief from the judgment.

KEY QUOTATIONS

“Because Cameron was not properly served, the default judgment is void.” (354)

“Because the default judgment is void, Cameron was due relief from that judgment, and the trial court erred in denying that relief.” (355)

FACTUAL BACKGROUND

Cecil E. Cameron allegedly rear-ended a vehicle occupied by Laythron and Ethel Tillis while driving a Hertz rental car, injuring Laythron. The Tillises twice attempted service by certified mail at Cameron's last-known address in Florida, but both mailings were returned unclaimed. The trial court then authorized service by publication, which occurred on July 22, July 29, August 5, and August 12, 2004, and entered a default judgment after Cameron did not appear through personal service. Cameron's attorney later challenged service and the default judgment, asserting that Cameron had not been properly served.

PROCEDURAL HISTORY

The Tillises sued Cameron in the Coffee Circuit Court for negligence and wantonness, with Ethel Tillis also asserting loss of consortium. After two unsuccessful attempts to serve Cameron by certified mail, the trial court authorized service by publication and later entered a default judgment awarding \$120,000 to Laythron Tillis and \$20,000 to Ethel Tillis. Cameron moved under Rules 55(c), 60(b), and 59(e), arguing that service was invalid and that the judgment was void, but the trial court denied relief. The Supreme Court of Alabama reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must provide Cameron relief from the void default judgment. The court did not reach the separate issue concerning the sufficiency of the evidence that Cameron avoided service.

CASES CITED

- Roberts v. Wettlin, 431 So. 2d 524, 526 (Ala. 1983)
- Smith v. Clark, 468 So. 2d 138, 141 (Ala. 1985)
- Clark, 468 So. 2d at 141
- Image Auto, Inc. v. Mike Kelley Enters., Inc., 823 So. 2d 655, 657 (Ala. 2001)
- Wise v. Siegel, 527 So. 2d 1281, 1282 (Ala. 1988)
- Braley v. Horton, 432 So. 2d 463 (Ala. 1983)