

SUPREME COURT OF ALABAMA

Weeks v. Case

810 So. 2d 661 (Ala. 2001) · Decided August 3, 2001

SUMMARY

The Alabama Supreme Court denied Thomas H. Weeks’s petition for a writ of mandamus seeking to vacate an order requiring him to produce audiotape recordings before the deposition of defendant John P. Case. The court held that the recordings were discoverable under the statement-related exception in Rule 26(b)(3), Ala. R. Civ. P., and that the timing of discovery was within the trial court’s discretion. The court concluded that Weeks had not shown a clear legal right to the requested relief.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Harwood, Justice; Harwood; Moore; See; Brown; Woodall; Stuart; Lyons
JURISDICTION	Alabama
DECIDED	August 3, 2001
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Weeks petitioned for a writ of mandamus directing the Mobile Circuit Court judge to vacate a discovery order requiring production of audiotape recordings before the deposition of a defendant. The Supreme Court of Alabama denied the petition.
STANDARD OF REVIEW	Mandamus is an extraordinary remedy requiring a clear legal right, an imperative duty accompanied by refusal, lack of another adequate remedy, and properly invoked jurisdiction. On discovery matters, mandamus review asks whether the petitioner clearly showed that the trial court abused its discretion; the right must be clear and certain and not doubtful.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; binding authority in Alabama.
PARTIES	Thomas H. Weeks v. John P. Case, Jr., Coastal Builders, Inc.

TOPICS

- discovery dispute
- writ of certiorari
- civil procedure
- appellate procedure
- contracts

PRACTICE AREAS

civil procedure

discovery

appellate procedure

contracts

construction law

QUESTIONS PRESENTED

1. Whether Weeks had a clear legal right to mandamus relief vacating the trial court's order requiring production of the recording of his conversations with Case before Case's deposition.
2. Whether Rule 26(b)(3), Ala. R. Civ. P., permitted the trial court to require pre-deposition production of a party's surreptitiously recorded statement concerning the action.
3. Whether the trial court abused its discretion in determining the timing and sequence of discovery.

HOLDINGS

1. Weeks failed to establish a clear legal right to an order vacating the trial court's directive that he produce the recording before Case's deposition; the petition for a writ of mandamus was denied.
2. The substantial-need and undue-hardship showing discussed in *Ex parte Doster Construction Co.* did not govern production of the recording of Weeks's conversations with Case because the recording fell within Rule 26(b)(3)'s exception for a party's own prior statement.

KEY QUOTATIONS

"A writ of mandamus is an extraordinary remedy, and it will be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.'" (at 664)

"The production of the audiotape recording in this case is not governed by the "substantial-need" and "undue-hardship" showing referred to in Doster." (at 666)

"Questions regarding the timing of discovery are well within the trial court's discretion." (at 667)

FACTUAL BACKGROUND

Weeks sued Case and Coastal Builders based on an alleged oral promise that Weeks would receive a condominium or its cash equivalent in exchange for contributing to the defendants' financial success. Weeks secretly recorded conversations with Case and with Coastal Builders employee Theresa Schmidt. After Case denied making the alleged promise, the defendants sought production of the recordings before Case's deposition, and the trial court ordered Weeks to produce them.

PROCEDURAL HISTORY

Weeks filed an action in the Mobile Circuit Court alleging breach of contract, fraudulent misrepresentation and suppression, and promissory or equitable estoppel based on an alleged oral promise. After the defendants moved to compel production of audiotapes before Case's deposition, the trial court ordered production and suspended the order to permit reconsideration and then mandamus review. Weeks sought mandamus relief in the Supreme Court of Alabama.

DISPOSITION

writ_denied

CASES CITED

- Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)
- Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991)
- Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998)
- Ex parte Compass Bank, 686 So. 2d 1135, 1137 (Ala. 1996)
- Ex parte Bozeman, 420 So. 2d 89, 91 (Ala. 1982)
- Ex parte Dorsey Trailers, Inc., 397 So. 2d 98, 102 (Ala. 1981)
- Ex parte L.S.B., 800 So. 2d 574, 579 (Ala. 2001)
- Ex parte Doster Construction Co., 772 So. 2d 447, 450-452 (Ala. 2000)
- Smith v. WNA Carthage, L.L.C., 200 F.R.D. 576 (E.D. Tex. 2001)
- Pro Billiards Tour Ass'n, Inc. v. R.J. Reynolds Tobacco Co., 187 F.R.D. 229 (M.D.N.C. 1999)
- Roberts v. Americable Int'l, Inc., 883 F. Supp. 499 (E.D. Cal. 1995)
- Ex parte Fielder, 528 So. 2d 325, 326 (Ala. 1988)
- Assured Investors Life Insurance Co. v. National Union Associates, Inc., 362 So. 2d 228 (Ala. 1978)
- Estes v. Texas, 381 U.S. 532, 540 (1965)
- Briscoe v. LaHue, 460 U.S. 325, 335 (1983)
- Imbler v. Pachtman, 424 U.S. 409, 439 (1976)