

SUPREME COURT OF ALABAMA

Russell v. Industrial Development Board of Montgomery

42 So. 3d 699 (Ala. 2010) · Decided January 29, 2010

SUMMARY

The Alabama Supreme Court considers a petition for a writ of mandamus challenging an order permitting the deposition of an attorney representing the Industrial Development Board of the City of Montgomery. The court addresses the standards governing mandamus review of discovery orders, including attempts to depose opposing counsel, and the scope of permissible discovery under the Alabama Rules of Civil Procedure. The underlying litigation concerns alleged breaches of most-favored-nation provisions in land-option agreements connected to the development of a Hyundai manufacturing plant.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Smith, Justice; Lyons; Woodall; Stuart; Bolin; Shaw; Murdock; Cobb
JURISDICTION	Alabama
DECIDED	January 29, 2010
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The Industrial Development Board petitioned for a writ of mandamus challenging the trial court's order permitting the plaintiffs to depose the IDB's attorney, Thomas T. Gallion III, and requiring production of documents at the deposition.
STANDARD OF REVIEW	Mandamus requires a clear legal right to the requested order, an imperative duty accompanied by refusal, lack of another adequate remedy, and properly invoked jurisdiction. For discovery orders, mandamus is available when the trial court clearly exceeded its discretion and ordinary appeal is inadequate. The Supreme Court reviewed whether the trial court exceeded its discretion in denying the protective order.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Alabama
PARTIES	Industrial Development Board of the City of Montgomery v. George E. Russell and Thomas E. Russell, as coexecutors and cotrustees of the will and testamentary trust of Earnest W. Russell, and Myrtis Russell,

Price McLemore, Mary H. McLemore, John McInnis, Jr., Timothy N. McInnis, Charles R. McInnis, Williams S. Newell, The Peoples Bank and Trust Company, as trustee for the Adaline Hooper Trust A and B

TOPICS

discovery dispute writ of certiorari standard of review civil procedure breach of contract

PRACTICE AREAS

civil procedure discovery appellate procedure contracts municipal law

QUESTIONS PRESENTED

1. Whether the Supreme Court of Alabama could review the trial court's discovery order by mandamus.
2. Whether the trial court exceeded its discretion by denying the IDB's motion for a protective order preventing the plaintiffs from deposing the IDB's attorney.
3. Whether the trial court's rulings permitting videotaping and requiring document production should be disturbed.

HOLDINGS

1. Mandamus was an appropriate means of reviewing the discovery order because the petition presented an exceptional discovery dispute and the IDB lacked an adequate remedy by ordinary appeal.
2. The court declined to adopt the Shelton approach insofar as it requires the party seeking to depose opposing counsel to initially justify the deposition before the opposing party moves for a protective order.
3. The IDB established good cause for a protective order because the information sought from Gallion was available from other sources and the plaintiffs failed to show that Gallion's testimony was crucial to preparation of their cases.

KEY QUOTATIONS

“Rather, under Rule 26, Ala. R. Civ. P., the party seeking to prevent the deposition of its counsel has the burden of moving for a protective order and demonstrating “good cause” under Rule 26(c).” (712-713)

“Therefore, in support of its motion for a protective order to prevent the deposition of its counsel, the moving party may demonstrate “good cause” under Rule 26(c) by showing that one or more of the following circumstances exist: (1) that there are other means by which to obtain the information sought; (2) that the information sought is privileged or is not relevant; or (3) that the information sought is not crucial to the preparation of the case.” (713)

“Because the IDB has shown that Gallion is not the only source of information about each of the topics on which the plaintiffs sought to depose him and because the plaintiffs have not demonstrated that deposing Gallion is crucial to preparing their cases, the IDB is entitled to a protective order preventing the plaintiffs from deposing Gallion.” (718)

FACTUAL BACKGROUND

The plaintiffs owned property subject to option agreements acquired by the IDB for a Hyundai automobile plant project. The agreements contained most-favored-nation clauses, and the plaintiffs alleged that they were entitled to the higher per-acre price paid for the separately acquired Shelton property. During discovery, the plaintiffs sought to depose the IDB's attorney, Gallion, concerning negotiations, the project agreement, exercise of the options, and closing-related matters, although the IDB maintained that the information was available from other sources.

PROCEDURAL HISTORY

The plaintiffs filed breach-of-contract actions against the IDB and Hyundai concerning most-favored-nation clauses in land-option agreements. After an earlier appeal reversed summary judgment for the IDB and remanded, the plaintiffs moved to compel Gallion's deposition. The trial court adopted the special master's recommendations permitting a videotaped deposition on specified transaction-related subjects and requiring document production. The IDB then petitioned the Supreme Court of Alabama for mandamus relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court was directed to vacate its order denying the IDB's motion for a protective order and enter a new order granting the motion and preventing the plaintiffs from deposing Gallion.

CASES CITED

- *McLemore v. Hyundai Motor Manufacturing Alabama, LLC*, 7 So. 3d 318 (Ala. 2008)
- *Ex parte United Serv. Stations, Inc.*, 628 So. 2d 501, 503 (Ala. 1993)
- *Ex parte Horton Homes, Inc.*, 774 So. 2d 536, 539 (Ala. 2000)
- *Home Ins. Co. v. Rice*, 585 So. 2d 859, 862 (Ala. 1991)
- *Ex parte Ocwen Federal Bank, FSB*, 872 So. 2d 810, 813 (Ala. 2003)
- *Ex parte Dillard Department Stores, Inc.*, 879 So. 2d 1134, 1137 (Ala. 2003)
- *Ex parte Guaranty Pest Control, Inc.*, 21 So. 3d 1222, 1225-26 (Ala. 2009)
- *Ex parte St. Vincent's Hosp.*, 991 So. 2d 200, 208 (Ala. 2008)
- *Ex parte O'Neal*, 713 So. 2d 956, 959 (Ala. 1998)
- *In re Subpoena Issued to Friedman*, 350 F.3d 65, 70-72 (2d Cir. 2003)
- *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)
- *Pamida, Inc. v. E.S. Originals, Inc.*, 281 F.3d 726, 729-31 (8th Cir. 2002)
- *Rainbow Investors Group, Inc. v. Fuji Tricolor Missouri, Inc.*, 168 F.R.D. 34, 36 (W.D. La. 1996)
- *West Peninsular Title Co. v. Palm Beach County*, 132 F.R.D. 301, 302 (S.D. Fla. 1990)
- *Cascone v. Niles Home for Children*, 897 F. Supp. 1263, 1267 (W.D. Mo. 1995)

- Ex parte Miltope Corp., 823 So. 2d 640, 644-45 (Ala. 2001)
- Ex parte Compass Bank, 686 So. 2d 1135, 1138 (Ala. 1996)
- Ex parte Consolidated Publishing Co., 601 So. 2d 423, 426 (Ala. 1992)
- State Farm Fire & Casualty Co. v. Slade, 747 So. 2d 293 (Ala. 1999)

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