Christian & Small

ATTORNEYS AND COUNSELORS

Alabama Appellate Courts

2010 UPDATE

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The appellate courts in Alabama have had a busy year, as evidenced by the Alabama Supreme Court statistics highlighted below. Following the statistics is a brief overview of the important amendments to the Alabama Rules of Civil Procedure and Alabama Rules of Appellate Procedure. Finally, there is an overview of important developments in the law of Alabama, with a particular focus on pitfalls to avoid when handling an appeal.

COURT STATISTICS

Number of filings and dispositions

- 839 certiorari petitions filed, 914 certiorari petitions disposed of
- 950 original appeals filed, 1073 original appeals disposed of

Average number of days between the assignment of a case and the release of a decision

- 98 days – certiorari petitions
- 171 days – original appeals

Average number of days in which cases with decisions were pending

- 111 days – certiorari petitions
- 377 days – original appeals

Number of decisions released

- 2009-2010: 830 certiorari decisions, 450 original appeal decisions
- 2008-2009: 663 certiorari decisions, 418 original appeal decisions
- 2007-2008: 547 certiorari decisions, 365 original appeal decisions

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RULES UPDATE

Amendments to Alabama Rules of Civil Procedure

ARCP 5(d)

- Amended to embrace the rule utilized in all circuit courts that "discovery materials" may be served electronically using the court's electronic filing system, but those materials will not be filed or retained in the court file

Amendments to Alabama Rules of Appellate Procedure

Rule Amendments Regarding Private Information

ARAP 28(d)(8)

- Amended to make clear that any brief that should not be made available to the public on an online electronic database must state at the top center of the cover of the brief, in capitalized bold lettering at least one inch in height, that the content of the brief falls within the provisions of either Rule 52 or Rule 56

ARAP 32(a)(2)(F) and (a)(3)(C)

- Amended to add the requirement that any document filed with the court that should not be made available to the public on an online electronic database must state at the top center of the front page, in capitalized bold lettering at least one inch in height, that the content of the filing falls within the provisions of either Rule 52 or Rule 56

ARAP 52

- Amended to note the requirement that documents falling within the provisions of Rule 52 should be clearly identified as described in ARAP 28 and ARAP 32

ARAP 56

- Adopted to provide for the redaction of personal data identified in any documents filed with the appellate courts; affects:
    - Social Security numbers and taxpayer IDs
    - Financial account numbers
    - Dates of birth
    - Names of minors
    - Home addresses of individuals
- Modeled on Federal Rule of Civil Procedure 5.2 and Federal Rule of Criminal Procedure 49.1

Rule Amendments Related to E-Filing

ARAP 11(a)(3)

- Amended to remove the requirement that the appellee give notice of the filing of its response brief to the trial court clerk

ARAP 11(a)(4)

- Amended to remove the requirement that a second copy of the record on appeal be filed in the appellate court, because records on appeal are now filed electronically

ARAP 25

- Amended to acknowledge the electronic filing rules
- Amended to allow documents to be filed by way of third-party carrier
    - Tracks FRAP 25 – delivery by commercial carrier will be timely if the document is filed within three calendar days of the party's delivery of the document to the carrier

ARAP 31

- Subdivision (a) amended to delete the requirement that the appellee give the clerk of the trial court notice of the filing of its brief
- Subdivision (b) amended to require the filing of one original and nine copies of briefs with the Supreme Court

ARAP 57

- Adopting the Interim Electronic Filing and Service Rule

Amendments as to New Filing Fees

ARAP 35A

• Direct appeal	$200
• Petition for permission to appeal pursuant to ARAP 5	$150
• Petition for a writ of certiorari (civil)	$150
• Petition for a writ of certiorari (criminal)	$150
• Petition for an extraordinary writ pursuant to ARAP 21	$150

CASE UPDATE:
RECENT CASES REGARDING PITFALLS TO AVOID WHEN HANDLING AN APPEAL

I. APPEALABILITY

Alabama Code § 12-22-2.

- With limited exceptions, an appeal can be taken only from the entry of a final judgment.

A. What constitutes an appealable final judgment?

Alfa Mutual Ins. Co. v. Bone, 13 So. 3d 369 (Ala. 2009); *Hall v. Reynolds*, --- So. 3d ----, 2009 WL 1716912 (Ala. June 19, 2009).

- Regardless of what a trial court's order is titled, if the trial court fails to fully dispose of all claims or fully declare the rights of the parties, the judgment is not a final judgment from which an appeal may be taken.

Lloyd v. Cook, --- So. 3d ----, 2010 WL 3075280 (Ala. Civ. App. Aug. 6, 2010).

- An order adjudicating fewer than all of the claims is not a final judgment from which an appeal may be taken.

Liberty Mutual Ins. Co. v. Greenway Enters., Inc., 23 So. 3d 52 (Ala. Civ. App. 2009).

- A summary judgment that conclusively determined all issues before the court, except for the defendant's request to tax costs and fees against the plaintiff, was a final judgment.
    - ARAP 58(c) states that the entry of judgment shall not be delayed for the taxing of costs, and the failure to tax costs does not affect the finality of a judgment.

Gonzalez, LLC v. DiVincenti, 844 So. 2d 1196, 1201 (Ala. 2002).

- The trial court's failure to assess attorney fees did not render a summary judgment nonfinal, because attorney fees were collateral to the judgment.

J.J. v. J.B., 30 So. 3d 453 (Ala. Civ. App. 2009).

- A dismissal without prejudice can support an appeal if the judgment conclusively determines the issues before the trial court.

Ex parte Directory Assistants, Inc., --- So. 3d ----, 2009 WL 4110528 (Ala. Nov. 25, 2009).

- The denial of a motion to dismiss ordinarily is not an appealable final judgment. However, the Court determined that the motion to dismiss, which argued that the plaintiff had to arbitrate its claims, was effectively a motion to compel arbitration. The denial of that motion, then, could be appealed.

New Acton Coal Mining Co. v. Woods, --- So. 3d ----, 2010 WL 1424020 (Ala. Apr. 9, 2010).

- There is a procedural difference, for purposes of appeal, between claims separated for trial under ARCP 42(b) and claims severed for separate trial under ARCP 21.
- If claims are separated for trial under ARCP 42(b), all claims must be tried before the trial court can enter a final judgment that may be appealed.
    - *See also Hamilton v. CSC Distribution, Inc.*, (Ala. Civ. App. 2008). A trial court did not enter a final judgment by disposing of a claim that had been separated for trial under Rule 42(b) where another claim remained pending.

B. What interlocutory orders may be appealed?

ARAP 4

- Appeals from interlocutory orders granting, continuing, modifying, refusing, dissolving, or refusing to dissolve an injunction
- Appeals from orders granting or denying a motion to compel arbitration
- Appeals from interlocutory orders appointing or refusing to appoint a receiver
- Appeals from interlocutory orders determine the right to public office

Mutual Assurance, Inc. v. Chancey, 781 So. 2d 172, 174 (Ala. 2000).

- Appeals from orders denying a petition to intervene as of right

Alabama Code § 6-5-642.

- Appeals from orders granting or denying class certification

Alabama Code § 12-22-10.

- Appeals from orders granting or denying a motion for new trial
    - Where the trial court grants a party's alternative motion for new trial, an order denying that party's primary motion for judgment as a matter of law is appealable. *John Crane-Houdaille, Inc. v. Lucas*, 534 So. 2d 1070 (Ala. 1988).

II. PERFECTING THE APPEAL

A. Time for Filing the Appeal

ARAP 4

- In most cases, the appellant has 42 days from the entry of judgment to file a notice of appeal.
- The appellant has only 14 days from the entry of judgment in:
    - Appeals from interlocutory orders granting, continuing, modifying, refusing, dissolving, or refusing to dissolve an injunction
    - Appeals from interlocutory orders appointing/refusing to appoint a receiver
    - Appeals from interlocutory orders determine the right to public office
    - Appeals from final judgments issued by a juvenile court
- In other cases, the time for filing an appeal is statutorily defined.

1. Timely filing a notice of appeal is a jurisdictional act.

Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1202-04 (Ala. 2009).

- The filing of a timely notice of appeal is a jurisdictional act.

2. Certain actions toll the time for filing a notice of appeal.

Rhodes v. Fulmer, 12 So. 3d 1239 (Ala. Civ. App. 2009).

- To suspend the time for filing a notice of appeal, a Rule 59 motion to alter must be filed within 30 days of the judgment.
- A Rule 60 motion does not toll the time for taking an appeal.

Barnes v. HMB, LLC, 24 So. 3d 460 (Ala. Civ. App. 2009).

- A trial court's own entry of a corrected order pursuant to Rule 60(a) does not affect the deadline to file an appeal, because a "change to a judgment to correct a clerical error" under Rule 60(a) "relates back to the date of the entry of the final judgment."
- In other words, the notice of appeal is due within 42 days of the entry of the original order, not the entry of the Rule 60(a) correction.

Graves v. Golthy, 21 So. 3d 720 (Ala. 2009).

- A Rule 62 motion for a post-judgment stay does not suspend the time for filing a notice of appeal. Under ARAP 4(a), only post-judgment motions under ARCP 50, 52, 55, or 59 suspend the time for filing a notice of appeal.

Liberty Mutual Ins. Co. v. Greenway Enters., Inc., 23 So. 3d 52 (Ala. Civ. App. 2009).

- The 42 days to file a notice of appeal can be tolled by the filing of a post-judgment motion. However, such motions are deemed denied by operation of law after 90 days.
- The notice of appeal must be filed within 42 days of a denial by operation of law to vest jurisdiction in the appellate court.

Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1202-04 (Ala. 2009).

- A trial court's failure to rule on a post-judgment motion is deemed a denial of that motion on the 90th day after the motion is filed, pursuant to ARCP 59.1.
- The 42-day time for filing a notice of appeal shall be computed from the date of the Rule 59.1 denial by operation of law. In other words, the time for filing a notice of appeal begins to run on the 90th day following the filing of a post-judgment motion, absent a valid extension of the 90-day period.

Rhodes v. Rhodes, 38 So. 3d 54 (Ala. Civ. App. 2009).

- Rule 60 motions are not subject to "denial by operation of law" under Rule 59.1. The trial court must rule on the Rule 60 motion, otherwise there will not be a final order for purposes of appeal.

R.J.G. v. S.S.W., 42 So. 3d 747 (Ala. Civ. App. 2009), *cert. denied Ex parte R.J.G.*, 42 So. 3d 754 (Ala. 2010).

- Post-judgment motions in juvenile court must be filed within 14 days of the entry of the order.
- A post-judgment motion in juvenile court is denied by operation of law after 14 days, pursuant to Alabama Rule of Juvenile Procedure 1(B), as opposed to the 90 days in other civil proceedings.
- A notice of appeal from a juvenile court's order must be filed within 14 days of the court's denial of the post-judgment motion (whether ruled upon or denied by operation of law).

B. The Notice of Appeal

ARAP 3

- The notice of appeal must specify the party or parties taking the appeal, the judgment or order appealed from, and the court to which the appeal is taken.
- The notice of appeal is filed in the trial court.

A docketing statement (ARAP 3), the docketing fee (ARAP 12 & ARAP 35A), and security for the costs on appeal (ARAP 7) should be filed with the notice of appeal.

Veteto v. Swanson Servs. Corp., 886 So. 2d 756 (Ala. 2003).

- When an appellant wishes to appeal as to multiple parties, the notice of appeal also must include the name of each appellee.

Whorton v. Bruce, 17 So. 3d 661 (Ala. Civ. App. 2009).

- Where a party mistakenly filed a notice of appeal in the district court rather than the circuit court and failed to use Form 1, the notice nevertheless effected a timely appeal because it contained all of the information required by law and the district and circuit courts shared the same clerk.

C. Staying Execution of the Judgment Pending Appeal

ARCP 62

- In most cases, Rule 62 provides an automatic stay of execution for 30 days after the entry of judgment.

To stay execution of the judgment pending an appeal, the party against whom the judgment was entered must post a supersedeas bond in the amount of 125% of the judgment (150% if the judgment is $10,000 or less) and have the bond approved by the clerk of the trial court. ARCP 62; ARAP 8.

D. Cross Appeals

ARAP 4

- If a timely notice of appeal is filed by any party, any other party may file a notice of appeal within 14 days of that notice, or within the original time for appeal, whichever is later.

Hitt v. State of Alabama Personnel Bd., 873 So. 2d 1080, 1088 (Ala. 2003).

- Failure of a party to take a cross appeal as to an adverse aspect of the judgment that was not included as an issue on appeal by the appellant generally will foreclose appellate consideration of the aspect of the judgment as to which no appeal was taken.

Special Assets, L.L.C. v. Chase Home Finance, L.L.C., 991 So. 2d 668, 679-80 (Ala. 2007).

- A cross appeal is necessary if the appellee seeks to attack the judgment of the trial court with the intention of either enlarging his own rights thereunder or lessening the rights of his adversary.
    - An appellee may only assert "any argument supported by the record" if his argument is in support of the trial court's judgment.

Henderson v. MeadWestvaco Corp., 23 So. 3d 625, 626 n.1 (Ala. 2009).

- Cross appeals are not necessary to assert arguments for affirming the trial court's ruling. An appellee may offer any argument that is supported by the record when seeking an affirmance, whether the argument was ignored by the court below or flatly rejected.

E. Special Procedures for Appealing Arbitration Awards

Tuscaloosa Chevrolet, Inc. v. Guyton, 41 So. 3d 95 (Ala. Civ. App. 2009).

- Clarifying the procedures for appealing an arbitrator's award under newly amended ARCP 71B and ARAP 4(e):

ARCP 71B

- Within 30 days of the arbitration award, file a notice of appeal, with a copy of the award signed by the arbitrator and any record or supporting documents, in the circuit court
- Clerk will enter the arbitration award as the final judgment of the court
- Any party opposed to the award must then file a Rule 59 motion to set aside or vacate
    - A Rule 59 motion is a condition precedent to further review by any appellate court

ARAP 4(e)

- Within 42 days of the order granting or denying the Rule 59 motion, a party may appeal as a matter of right

Hereford v. D.R. Horton, Inc., 13 So. 3d 375 (Ala. 2009). *See also Hall St. Assocs., LLC v. Mattel, Inc.*, 128 S. Ct. 1396 (2008).

- The Alabama Supreme Court followed the lead of the U.S. Supreme Court in holding that "manifest disregard for the law" is not a proper ground by which an arbitration award can be challenged.

Championcomm.net of Tuscaloosa, Inc. v. Morton, 12 So. 3d 1197 (Ala. 2009); *Horton Homes, Inc. v. Shaner*, 999 So. 2d 462 (Ala. 2008); *Jenks v. Harris*, 990 So. 2d 787 (Ala. 2008); *Lindsey v. Deep S. Props., LLC*, --- So. 3d ----, 2009 WL 2573906 (Ala. Aug. 21, 2009); *Dawsey v. Raymond James Fin. Servs., Inc.*, --- So. 2d ----, 2009 WL 281302 (Ala. Feb. 6, 2009).

- To begin judicial review of an arbitration award, the Circuit Court must enter the arbitration award as a judgment. Entry of the award as a judgment is a prerequisite of judicial review of an arbitration award. A party challenging the arbitration award must then file a motion to vacate the award within 30 days of the entry of the judgment. The motion to vacate is a prerequisite to filing an appeal.

F. Special Procedures for Petitioning for Extraordinary Writs

Ex parte Bank of America, N.A., 39 So. 3d 113, 119 (Ala. 2009).

- Petition for writ of mandamus must include, as attachments, the evidentiary basis required for the appellate court to make a ruling.
    - For example, attaching copies of *pleadings* will not be enough to support the issuance of a writ if the appellate court needs to consider *facts in evidence* to make its determination.

Ex parte Hoyt, 984 So. 2d 424, 425-26 (Ala. Civ. App. 2007).

- The presumptively reasonable timeframe in which to file a petition for writ of mandamus is 42 days.
- A petition filed outside the presumptively reasonable time must include a statement of circumstances constituting good cause for the appellate court to consider the petition, notwithstanding that it was filed beyond the presumptively reasonable time.
    - If the petition does not contain such a statement, it will be dismissed.
- A motion to reconsider an *interlocutory order* does not toll the presumptively reasonable time period that a party has to file a petition for writ of mandamus, unlike a *post-judgment* motion to alter.
    - Petitions regarding interlocutory orders must be filed within 42 days of the interlocutory order or contain a statement of good cause, regardless of whether a motion to reconsider was filed.

Ex parte Pelham Tank Lines, Inc., 898 So. 2d 733, 735 (Ala. 2004).

- Filing a petition for permission to appeal under ARAP 5 does not toll the presumptively reasonable timeframe for filing a petition for writ of mandamus.

Ex parte The Terminix Int'l Co., --- So. 2d ----, 2009 WL 130103 (Ala. Jan. 16, 2009).

- A timely filed motion for protective order is a jurisdictional prerequisite to mandamus review of an order compelling discovery.

Ex parte Carlisle, --- So. 3d ----, 2009 WL 1875566 (Ala. June 30, 2009).

- Appellate review of a discovery order by mandamus generally will be available only in exceptional cases, such as, *e.g.*, when a privilege is disregarded; when a discovery order compels the production of patently irrelevant or duplicative documents; when the trial court imposes sanctions or denies discovery, effectively all but determining the outcome such that the petitioner merely would be going through the motions of a trial to obtain an appeal; or when the trial court impermissibly prevents the petitioner from making a record on the discovery issue so that the appellate court cannot review the effect of the trial court's alleged error.

Ex parte King, 23 So. 3d 777 (Ala. 2009).

- Mandamus review of a pre-trial ruling on a motion in limine regarding evidence is not appropriate.
- *King* was a criminal case, but given the lack of published Alabama opinions on this particular topic, it may be instructive in civil cases as well.

Ex parte Nationwide Ins. Co., 991 So. 2d 1287 (Ala. 2008).

- The Court confirmed that, in a narrow class of cases involving fictitious parties and the relation-back doctrine, an appeal is not an adequate remedy to review the defense that a claim is barred by the statute of limitations. A petition for writ of mandamus is appropriate.

III. THE RECORD ON APPEAL

ARAP 10

- Within 7 days of filing the notice of appeal, the appellant must file with the clerk of the trial court a written designation of the portions of the clerk's record that should be included in the record on appeal.
    - The appellee then has 7 days to designate any additional portions of the record he deems necessary.
- Within 7 days of filing the notice of appeal, the appellant must complete a transcript purchase order and pay the estimated cost of the transcript to the court reporter.

ARAP 11

- The trial court clerk has 28 days to assemble the clerk's record. The trial court may grant the clerk two 7-day extensions for the completion of the clerk's record. The clerk may seek further extensions from the appellate court.

- The court reporter has 56 days to complete the transcript. The trial court may grant the court reporter four 7-day extensions for the completion of the transcript. The court reporter may seek further extensions from the appellate court.
- Within 7 days after the completed transcript is filed, the clerk of the trial court must compile the entire record on appeal, including both the clerk's record and the reporter's transcript, and file a certificate of completion with the appellate court.
    - This certificate of completion initiates the briefing schedule.

Fluker v. Wolff, --- So. 3d ----, 2010 WL 996527, at *7 (Mar. 19, 2010).

- The appellant has the burden of offering the appellate court a record sufficient to support a reversal.
- An incomplete record may be supplemented pursuant to ARAP 10.

Cockrell v. Cockrell, 40 So. 3d 712 (Ala. Civ. App. 2009).

- When oral testimony is considered by the trial court but is not in the record on appeal, the appellate court will presume that the evidence was sufficient to support the judgment of the trial court.

Ex parte Allianz Life Ins. Co. of N. Am., 25 So. 3d 411 (Ala. 2008).

- Failure to attach all relevant and necessary documents to a petition for writ of mandamus will result in the denial of the petition.

IV. ARGUMENTS AVAILABLE ON APPEAL

A. Waiver/Preservation of Error

Maloof v. John Hancock Life Ins. Co., --- So. 3d ----, 2010 WL 3797979 (Ala. Sept. 30, 2010).

- The appellate courts will not review an argument not presented to the trial court.
- In *Maloof*, though the appellant had argued in the trial court that the appellee's answer was untimely, it argued so for a different reason than the one articulated in the appellate court. The Court, therefore, refused to consider the untimeliness argument.
- *See also Prescott v. Prescott* (Ala. Civ. App. 2008) ("[T]he [appellant] had the opportunity to bring this issue to the trial court's attention by filing a postjudgment motion but failed to do so. Because the [appellant] failed to file a postjudgment motion and raises this argument for the first time on appeal, we cannot consider this argument.").
    - Remember that a trial court has discretion to consider a new legal argument in a post-judgment motion. *Woodruff v. Woodruff*, (Ala. Civ. App. 2009). It is better to present arguments for the first time in a post-judgment motion than on appeal, because the trial court may consider them; the appellate court will not.

Nance v. Southerland, --- So. 3d ----, 2010 WL 334545 (Ala. Civ. App. Jan. 29, 2010).

- The Court refused to consider an argument raised in a brief that was supported only by three sentences that cited no legal authority. The Court found the argument to be inadequate under ARAP 28 and, therefore, effectively waived.

Skerlick v. Gainey, 42 So. 3d 1288 (Ala. Civ. App. 2010).

- A party waives the ability to challenge the sufficiency of the evidence on appeal if the party does not renew its motion for judgment as a matter of law at the close of all the evidence.
    - *Compare Robertson v. Gaddy Electrict & Plumbing LLC* (Ala. 2010) (holding that a party against whom a motion for judgment as a matter of law is entered need not raise the sufficiency of the evidence argument in a renewed motion for judgment as a matter of law).

New Properties, LLC v. Stewart, 905 So. 2d 797 (Ala. 2004).

- Generally, a party must argue the sufficiency of the evidence in a Rule 50 motion for judgment as a matter of law at the close of the evidence to preserve the issue for appeal.
    - ARCP 52 provides an exemption from this requirement when written findings of fact are made. Parties may move under ARCP 52(b) to amend these findings of fact. Rule 52(b) states that objections to the findings of fact are not required in nonjury trials to challenge the sufficiency of the evidence.
- However, the Court determined that when the trial court has made *no* written findings of fact in a nonjury trial, a party must move for a new trial in order to preserve the sufficiency of the evidence question for appellate review.
- *Compare with Adams v. Adams*, 21 So. 3d 1247 (Ala. Civ. App. 2009) (acknowledging that where a trial court makes written findings of fact, Rule 52(b) controls and *New Properties* is inapplicable: a party need not object to the findings of fact to preserve the issue for appellate review).

Cook's Pest Control, Inc. v. Rebar, 28 So. 3d 716 (Ala. 2009).

- To properly preserve an argument that the evidence did not raise a jury question, a party must move for judgment as a matter of law. A challenge to the correctness of the jury charges is neither required nor sufficient to preserve this argument.

Baldwin County Electric Membership Corp. v. City of Fairhope, 999 So. 2d 448 (Ala. 2008).

- The denial of a motion in limine does not preserve an objection to evidence for appellate review.
- To obtain appellate review of an evidentiary objection, the party opposing the evidence must make a timely objection, stating the specific grounds of the objection, at the same time the evidence is introduced at trial.

Warren v. Hooper, 984 So. 2d 1118 (Ala. 2007).

- Where the parties to an action have not engaged in discovery and one party files a motion for summary judgment, the non-moving party may not oppose the motion

on the basis of lack of discovery unless that party files an affidavit pursuant to Rule 56(f) explaining why the motion for summary judgment is premature and requesting more time for discovery.

Retail Developers of Ala., LLC v. East Gadsden Golf Club, Inc., 985 So. 2d 924 (Ala. 2007); *Chapman Nursing Home, Inc. v. McDonald*, 985 So. 2d 914 (Ala. 2007).

- Where an appellant fails to cite authority in support of arguments presented in briefs, the appellate court may affirm the trial court's judgment as to those issues.

Roberts v. NASCO Equip. Co., 986 So. 2d 379 (Ala. 2007).

- An appellant's failure to cite relevant legal authority and reference to materials outside the record will justify an appellate court's affirming the trial court's judgment without further consideration.

B. Specific Issues

1. Jurisdiction

Allbritton v. Dawkins, --- So. 3d ----, 2009 WL 793130 (Ala. Civ. App. Mar. 27, 2009).

- The absence of indispensable parties is a jurisdictional defect that renders a proceeding void.

Johnson v. Neal, 39 So. 3d 1040 (Ala. 2009).

- Lack of subject matter jurisdiction may be raised at any time, even on appeal though neither party raised the issue in the trial court.
- Any action taken by a trial court that lacks subject matter jurisdiction is void.
    - Void orders or judgments will not support an appeal.

2. Constitutionality

Nichols v. Nichols, 4 So. 3d 491 (Ala. Civ. App. 2008).

- Courts will not consider a statute's constitutionality where deciding the constitutional question is not necessary to resolving the dispute.

3. Negligence of Attorney

Lifestar Response of Ala., Inc. v. Admiral Ins. Co., --- So. 2d ----, 2009 WL 280457 (Ala. Feb. 6, 2009).

- In a question of first impression in Alabama, the Supreme Court held that the negligence of an attorney hired to represent an insured is not imputed to the insurance company that retained the attorney. Because the insurance company could not control the professional judgment of the attorney, it could not be vicariously liable for the attorney's negligence in handling the matter.

4. Damages/Remittitur

Hilb, Rogal & Hamilton v. Beiersdoerfer, 33 So. 3d 557 (Ala. 2009).

- A compensatory damages award cannot be remitted unless the plaintiff is given the option of a new trial.

V. ARGUMENTS AVAILABLE ON REHEARING

G.P. v. Houston County Dept. of Human Resources, 42 So. 3d 112 (Ala. Civ. App. 2009).

- Where a party applying for rehearing merely repeats the arguments made in the principal submissions, the court will deny rehearing.