

1 got enough documentation from everybody to go
2 forward. So I really don't need -- and it has
3 been a habit in the past for us to have a
4 hearing, and then I start getting additional
5 motions and letters and things like that giving
6 me more law.

7 And, frankly, it's not helpful. I
8 don't need it. You all have done a good job
9 documenting what you believe the law to be. And
10 it's my job to do my job, which is then to
11 decide how all that applies. And so I don't
12 need anything -- I don't need any more briefs on
13 these issues.

14 All right. The next thing I want
15 to go to, then, is Bladon Properties's Motion to
16 Extend Deadlines. Let me find my copy of that.

17 All right, Mr. Donald -- Mr. Chris
18 Donald.

19 MR. CHRIS DONALD: Yes, sir. Judge, I
20 think as I set forth in my motion, we have only
21 been a party to this case for under a few weeks.
22 And at this point, Bladon Properties has not had
23 the opportunity to conduct any discovery. Many
24 of these claims as I understand it are
25 completely separate from the claims that have

1 been made against Tom Donald.

2 There are -- Bladon Properties has
3 not been able to interview anybody, no
4 depositions. They have not been able to issue
5 subpoenas. And as I understand it now, there is
6 a stay on all discovery. And for that reason, I
7 introduce this motion to the Court asking that
8 Bladon Properties be allowed to conduct
9 discovery.

10 I do not think based on the number
11 of plaintiffs in this case -- I think there are
12 at least seven on the other side of Georgia who
13 have asked this determination be made by the
14 Court. Given the complexity of the issue, the
15 amount of discovery that will be needed, I think
16 it will take at least six months for me to
17 conduct both discovery interrogatories,
18 production of documents, as well as depositions
19 and other discovery.

20 And I would ask the Court allow us
21 time to do so.

22 THE COURT: All right. Any objection
23 on that from the plaintiffs?

24 MR. COLLEY: We're neutral, Judge.
25 whatever you decide we'll follow.

1 THE COURT: Well, let me ask: Is it
2 practical -- and this case is set for bench
3 trial in less than a month and for jury trials
4 in about a month after that. Is it practical
5 for us to try to maintain that schedule? Is it?

6 MR. DODD: (Shakes head.)

7 THE COURT: I don't think so, either.
8 Mr. Dodd is shaking his head. I really don't
9 see how we can try this whole case or try part
10 of this case without Bladon Properties.

11 And I -- there is -- I don't think
12 Mr. Chris Donald's requests are unreasonable at
13 all.

14 MR. DODD: Judge, I'm -- the only thing
15 I would offer is I don't know that a full six
16 months is needed. They got in late. The reason
17 they got in late is two fold -- one is Bladon
18 Properties avoided service for a long period of
19 time and delayed this process. Even with that
20 said -- and with participation of Mr. Donald,
21 Defendant Donald over there.

22 But with that said, there is no
23 direct claims against Bladon Properties. We're
24 not asking for Bladon Properties' money or
25 anything like that. All we want to do is make

1 sure they're a party to this suit. And the very
2 -- the claims is the nature of this road. It's
3 going back to that declaratory judgment.

4 And Chris and I have talked. I've
5 put -- I've pressed him for setting a date in
6 April to depose the corporate representative for
7 Bladon Properties. And as of this -- as of
8 right now, I still haven't been given a date.

9 He's explained to me he's got a
10 trial next week, and then this trial was
11 scheduled the following week or two weeks, and
12 he couldn't give me a date as of yet.

13 And I endeavor to try to work with
14 him and try to secure some dates. Explained to
15 him that, you know, I can put up two or three of
16 the Georgia plaintiffs, the most knowledgable
17 ones, and we can work through this.

18 I don't foresee an extensive amount
19 of discovery. I agree with Chris and what he
20 said as far as the complexity and the number of
21 issues involved. But should the Court continue
22 it for six months or three months -- I think
23 we'll be able to get it done.

24 THE COURT: Okay.

25 MR. CHRIS DONALD: Response, Judge?

1 THE COURT: Sure.

2 MR. CHRIS DONALD: Mr. Dodd has
3 introduced some testimony, it appears, that the
4 Bladons -- he stated the Bladons have -- or
5 Bladon Properties have avoided service. I think
6 he has implicated Tom Donald in this avoidance
7 of service.

8 I don't believe Mr. Dodd has any
9 firsthand knowledge of anything he just said. I
10 would object to it. It is not factual, and it
11 is not the way I understand it to be.

12 Bladon Properties has not, in fact,
13 avoided service. But we are here now, and I
14 would say that looking at the record as I have
15 seen it on Alacourt, it would appear that this
16 discovery may take a full six months.

17 I doubt it will take longer, but I
18 don't know because we haven't started, yet. And
19 we have not started noticing depositions or
20 anything else because of your stay on discovery
21 in this court and out of respect for that. I
22 have discussed with Mr. Dodd depositions, and we
23 will get them scheduled presuming, of course,
24 that you allow us to conduct discovery.

25 THE COURT: All right. Finally, I want

1 to talk about the Motion for Sanctions. Mr.
2 Butler --

3 MR. BUTLER: Yes, Your Honor. Before I
4 start with that, may I refer the Court to one
5 last case? May I?

6 THE COURT: Sure.

7 MR. BUTLER: This case, I believe, has
8 come up in prior motions, but this case is
9 called Cotton v May, 301 So.2d 168, Supreme
10 Court of Alabama, 1974. And what this case
11 stands for is -- what it says is that acts such
12 as are usually done or performed only by the
13 order -- by the owner or one asserting ownership
14 are legal evidence to go before the jury on the
15 question of adverse holding.

16 So I would ask the Court to bear
17 that in mind as it discusses or considers
18 Bowater's prescriptive claims and thus Shafer's
19 and Turtle Time's.

20 MR. CHRIS DONALD: Could you repeat the
21 cite on the case, please.

22 MR. BUTLER: Cotton v May, 301 So.2d
23 168, 1974.

24 THE COURT: All right.

25 MR. BUTLER: Okay. Motion for

1 Sanctions is filed by Alan and Angie Brown, and
2 the basis of this is that we believe Defendant
3 Donald has maintained frivolous arguments. The
4 latest frivolous argument that he made -- well,
5 it actually started before this -- the acts that
6 brought this about.

7 Defendant Donald has made arguments
8 repeatedly that because certain defendants were
9 adjudged by the Court to have an easement by
10 necessity that therefore they wouldn't also
11 prove prescriptive claims.

12 And the Court -- this was in
13 contradiction of the Court's clear orders as
14 this Court is aware of -- as this -- as Your
15 Honor is aware of.

16 Defendant on -- in his motion about
17 an easement by necessity of the Browns that was
18 filed last year, late last year, tried to say
19 that -- and he says and says it in a motion is
20 that because the Brown's had argued that they
21 were entitled to a prescriptive easement based
22 on the acts of their predecessors in interest --
23 because they -- because the Browns adopted the
24 Alabama plaintiff's motion for purposes of
25 showing a prescriptive easement that somehow

1 this also meant that the Browns were in the same
2 boat as Turtle Time in regards to an easement by
3 necessity.

4 So the Court will remember that
5 Judge Rains issued an order in August of 2007
6 granting Turtle Time an easement by necessity,
7 and then later on this order that we've talked
8 about in 2008 took that easement by necessity
9 away from Turtle Time. And the reason why the
10 Court took that easement by necessity away from
11 Turtle Time is because Donald -- Defendant
12 Donald argued and showed that Turtle Time had a
13 different route to get to its property.

14 The Browns had never had a
15 different route to get to their property.
16 They're not in the same boat as Turtle Time was.
17 And I just find it to be frivolous for Defendant
18 Donald to have filed a motion with this Court
19 saying that the Browns should have their
20 easement by necessity -- shouldn't be able to
21 show an easement by necessity.

22 Or first that they should be given
23 the easement by necessity that Turtle Time was
24 granted in 2007, and then say, well, we've got
25 to take it away when it was Turtle Time that had

1 an alternative access route.

2 Now, where was there any evidence
3 ever presented that Alan and Angie Brown had an
4 alternative way to get to their route? For the
5 defendant to assert that in a motion and for --
6 to put that on the Court and to put that on the
7 parties after all the other filings that have
8 come before us, in my opinion, is just too much.
9 And it was frivolous.

10 It was a frivolous filing, Tom.
11 And I would ask you to explain it why you filed
12 that with this Court.

13 THE COURT: All right. Mr. Donald, you
14 can argue your response.

15 MR. TOM DONALD: Okay. First, I'd like
16 to respond to Mr. Butler's comment about my
17 having argued that Judge Rains -- I still am not
18 clear on this. But I think he's saying that
19 I've argued that Judge Rains would not -- order
20 precluded them from pursuing an easement by
21 prescription. I've never ever argued that.

22 They have all the right in the
23 world to pursue an easement by prescription.
24 And I think that's what Judge Rains was saying
25 that certainly they have a right to pursue an

1 easement by prescription.

2 Now, I have argued that under
3 Alabama law an easement by necessity would
4 preclude an easement by prescription. But I've
5 never ever contended that the plaintiffs don't
6 have a right to try to prove that they have an
7 easement by prescription. And I don't know
8 where in the world the notion that I made such
9 an argument came from.

10 Now, Mr. Butler just puts that as
11 -- that contention as support for his second
12 contention. And in his Motion for Sanctions, he
13 quotes something in paragraph 2 of his motion --
14 he quotes something that I wrote in my motion,
15 my Motion to Clarify Judge Rain's order, that
16 says -- it quotes something that the plaintiffs
17 stated in one of their motions.

18 And then I said, "This shows
19 acquiescence by the Browns to be the subject --
20 to be subject to the position adopted by this
21 Court related to the easement by necessity which
22 was the focus of this Court's order of August
23 24, 2007, and June 11, 2008.

24 The only point that I was making
25 there -- at least the only point that I -- ever

1 entered my mind when I wrote that -- was the
2 Browns say that whatever applied to Turtle Time
3 applies to them. And since the easement by
4 necessity Judge Rains ordered applied to Turtle
5 Time, there ought to be an easement by necessity
6 that applies to Browns.

7 Now, Mr. Butler then said, "In
8 other words" -- namely Mr. Butler's words -- and
9 then he wrote something that I considered to be
10 absolutely ludicrous and preposterous. And then
11 he goes on to say because he thinks that this is
12 what I was thinking that therefore I ought to be
13 sanctioned.

14 well, I never said anything like
15 this, and it's an absurd notion that I would
16 somehow be thinking that because Turtle Time had
17 its easement extinguished that the same logic
18 ought to be applied to extinguishing the Browns'
19 easement.

20 It doesn't apply because the Browns
21 have no other access. Now, my original motion
22 stated this three or four times. The very last
23 page, the conclusion page -- the last sentence
24 before the conclusion says -- alludes to an
25 easement by necessity continuing to serve the

1 property of the Browns. I'm not arguing that it
2 doesn't continue to serve. Of course, it
3 continues to serve.

4 And, finally, in the order that I
5 asked the Court to issue, the very last sentence
6 of that order said, "The said easement by
7 necessity shall be deemed" -- this is what I
8 quoted -- I wanted the Court to agree to --
9 "shall be deemed to serve the property of the
10 Browns."

11 Now, two places on the very last
12 page I say that the easement by necessity serves
13 the property of the Browns. I have never said
14 and I didn't say anywhere in my motion that the
15 Brown's easement by necessity should be
16 extinguished for any reason. I never suggested
17 that. That's all in Mr. Colley's head.

18 And as he stated in his motion,
19 these are other words -- not words that I wrote,
20 but words that he wrote -- that he finds to be
21 absurd. So if there is any absurdity here, it's
22 on Mr. Butler's part and not on my part.

23 THE COURT: All right. All right.
24 Regarding anything else that we've talked about
25 today, Mr. Tom Donald, do you have anything else

1 you want to add?

2 MR. TOM DONALD: I probably do, but it
3 escapes me at this point. I'm sorry.

4 THE COURT: Anything from the
5 plaintiffs?

6 MR. DODD: No, sir.

7 MR. COLLEY: I think we've covered
8 everything that's on your list for today.

9 THE COURT: Mr. Chris Donald?

10 MR. CHRIS DONALD: No, Judge.

11 THE COURT: Okay. Let me do make a
12 couple of requests of you all. This file is
13 4,378 pages on Alacourt. And I know it is -- it
14 was a lot of parties. There is a lot of legal
15 descriptions, and it's been going on a long
16 time.

17 But when you all file things in the
18 future, you don't have to attach, for instance,
19 an order that I have already written or you
20 don't have to attach a pleading or a filing that
21 was made by the other party that's already in
22 the file. You can just reference it.

23 I don't need evidence, Mr. Donald,
24 for instance, where if you want to talk about
25 some interrogatories that you have filed, you

1 don't have to attach those interrogatories.
2 They're already in the file.

3 You can just reference them, and I
4 can find them and hopefully that will cut down
5 things. And if there is relevant deposition
6 testimony, it would really help me out if you
7 would only attach the relevant portion of a
8 deposition testimony. 444 pages is a lot. And
9 I don't mind reading, and I've read just about
10 all of it. But most of it is completely
11 irrelevant as to what we're here on today.

12 I had to hunt for the sections that
13 were relevant. So if y'all would, help me with
14 that by kind of streamlining what we're doing.
15 If it's in the file, don't attach it again,
16 please, please. Because this case has already
17 gotten voluminous, and it doesn't need to get
18 any bigger.

19 All right. I'll get an order that
20 clarifies everything as far as scheduling along
21 with whatever order I make on these summary
22 judgment motions.

23 For right now, I'm not changing any
24 court dates, but I think we can probably all
25 anticipate that happening. But I'll get that to

1 you just as quickly as I can, and I'm not going
2 to drag my feet. So you all should have an
3 order just in the very next few days.

4 MR. DODD: Thank you, Judge.

5 THE COURT: All right. Thank you all.

6 MR. COLLEY: Thanks, Judge.

7 MR. CHRIS DONALD: Thank you, Judge.

8 THE COURT: Mr. Donald, don't forget
9 your exhibits.

10 MR. TOM DONALD: Thank you.

11 (Whereupon, the hearing was
12 concluded for the day.)

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**CERTIFICATE OF COMPLETION
OF REPORTER'S TRANSCRIPT**

Appellate Case Number

TO THE CLERK OF THE: SUPREME COURT OF ALABAMA
 COURT OF CIVIL APPEALS OF ALABAMA

DATE OF
NOTICE OF APPEAL: 5-5-14

APPELLANT

Thomas C. Donald

v. APPELLEE

Turtle Time, Inc.

I certify that I have this date completed and filed with the clerk of the trial court the original of a true and correct transcript of the evidence and matters designated by the parties. All pages are numbered serially, in the upper right corner of the page, prefaced by an index and ending with the number appearing at the bottom of this certificate.

I certify that a copy this certificate is this date being served on the clerk of the trial court and on counsel for each of the parties, along with a copy of the index (with copies of the transcript as ordered).

DATED this 7th day of July, 2014.

/s/ Cyndi H. Tumlin

Circuit Reporter

Last numbered page of reporter's transcript: 116

(Amended February 9, 1982; October 1, 1991.)

¹ The clerk of the trial court is reminded to assemble the record on appeal (designated clerk's record and designated reporter's transcript) in volumes of not more than 200 pages each, and to make the record on appeal available first to counsel for appellant and then to counsel for appellee as an aid to the preparation of their respective briefs.

**CERTIFICATE OF COMPLETION OF
RECORD ON APPEAL BY TRIAL CLERK**

Appellate Case Number
1130875

TO THE CLERK OF THE: SUPREME COURT OF ALABAMA
 COURT OF CIVIL APPEALS OF ALABAMA

DATE OF
NOTICE OF APPEAL: 5/5/14

APPELLANT
THOMAS C. DONALD

v. APPELLEE
TURTLE TIME, INC.

I certify that I have this date completed the record on appeal by assembling in (a single volume of _____ pages)
(2 volumes of 200 pages each and one volume of 100 pages) the clerk's record and the reporter's transcript
and that the record on appeal will be made available to the parties for the preparation of briefs.

I certify that a copy of this certificate will this date be served on counsel for each party¹ to the appeal.

DATED this 9th day of JULY, 2014

s/PAM SIMPSON

Circuit Clerk

DEKALB

County

(Amended October 1, 1991.)

¹ Counsel for appellant is reminded that the appellant's brief is due to be filed with the clerk of appellate court within 28 days from the date of this certificate.

**CERTIFICATE OF COMPLETION OF
RECORD ON APPEAL BY TRIAL CLERK**

Appellate Case Number
1130875

TO THE CLERK OF THE: SUPREME COURT OF ALABAMA
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APPELLANT
THOMAS C. DONALD

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DATED this 9th day of JULY, 2014.

s/PAM SIMPSON

Circuit Clerk

DEKALB

County

(Amended October 1, 1991.)

¹ Counsel for appellant is reminded that the appellant's brief is due to be filed with the clerk of appellate court within 28 days from the date of this certificate.

THOMAS C. DONALD
Plaintiff

Civil Action No: CV 2006 316

Appellate Case No: 1130875

vs.

TURTLE TIME, INC
Defendant

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