

ROBINSON V. HARRIGAN TIMBERLANDS LIMITED
PARTNERSHIP: THE ALABAMA SUPREME COURT
REINFORCES NONMOVANT’S BURDEN OF PROOF UNDER
ALA. R. CIV. P. 56(C)

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In *Robinson v. Harrigan Timberlands Limited Partnership*, the Supreme Court of Alabama addressed claims brought by landowner Robert Robinson against Harrigan Timberland Limited Partnership (“Harrigan”) and several timber companies for cutting timber on land he allegedly owned.¹ Specifically, Robinson “asserted [the following] five claims against the timber companies,” each of which is dependent on Robinson’s legal ownership of the disputed property: “(1) trespass to land, (2) wrongful cutting of timber under [Alabama law],² (3) wrongful cutting of timber under the common law, (4) conversion of timber under [Alabama law],³ and (5) . . . a negligent-trespass claim.”⁴ The timber companies subsequently filed a motion for summary judgment, which the Clarke Circuit Court granted.⁵ On appeal, the Supreme Court of Alabama affirmed the judgment because once the timber companies demonstrated that Robinson did not satisfy the prima facie element of ownership, the burden shifted to Robinson to prove that he owned the property, which he ultimately failed to meet.⁶

Robinson owned land adjacent to Harrigan’s land, with “Bassetts Creek” as the properties’ boundary.⁷ A 2012 deed conveyed to Robinson land “West of Bassetts Creek . . . containing [thirty-nine] acres,” while a 1998 deed conveyed to Harrigan the land “which lies East of

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¹ *Robinson v. Harrigan Timberlands Limited Partnership*, No. 1200563, 2022 WL 1310977, at *1 (Ala. 2022). Robinson sued Harrigan; Scotch Land Management, LLC; Fulton Logging Company, LLC; Blacksheep Woodlands, LLC (collectively referred to as “the timber companies”); and Todd Overstreet d/b/a Overstreet Timber Company, who was later dismissed. *Id.*

² Ala. Code § 35-14-1 (1975).

³ *Id.* § 9-13-62.

⁴ *Robinson*, 2022 WL 1310977, at *2.

⁵ *Id.* at *1.

⁶ *Id.* at *7.

⁷ *Id.* at *1.

Bassetts Creek.”⁸ However, there was an old creek bed twelve and a half acres east of the current channel of Bassetts Creek.⁹ Robinson claimed ownership of these twelve and a half acres based on his allegation that “the old creek bed was the ‘Bassetts Creek’ referred to in the deeds,” rather than the current channel.¹⁰ When Harrigan and the timber companies cut and sold timber off of these twelve and a half acres in September 2016, Robinson brought suit alleging that he owned the land.¹¹

In a motion for summary judgment, the timber companies argued that because Robinson failed to put forth sufficient evidence to prove that the “Bassetts Creek” referenced in the deeds followed the old creek bed and that “its course had shifted to the current channel by avulsion,” Robinson failed to prove ownership of the disputed property.¹² The circuit court granted this motion.¹³ On appeal, Robinson argued that the timber companies failed to prove that the creek moved due to accretion and, even if they did make this showing, that he provided substantial evidence in response to show ownership.¹⁴

Before analyzing which party bore the burden of proving ownership, the court explained that determining who owned the disputed property was premised on whether the creek’s course changed by avulsion or accretion.¹⁵ Avulsion involves a sudden, violent, and visible change in a creek’s course while accretion involves a more “gradual and imperceptible” change.¹⁶ The court restated the English common-law rule that where a creek’s channel shifts suddenly and violently by avulsion, “the boundaries of such lands are unaffected, and remain in their original position, but where the change is . . . caused by accretion . . . the boundaries shift with the shifting of the channel or shore.”¹⁷ In other words, if Bassetts Creek’s course changed due to accretion, Harrigan owned the disputed land, whereas if the creek’s course changed due to avulsion, Robinson owned the land.¹⁸

⁸ *Id.*

⁹ *Id.*

¹⁰ *Robinson*, 2022 WL 1310977, at *1.

¹¹ *Id.*

¹² *Id.* at *2.

¹³ *Id.* at *1.

¹⁴ *Id.* at *2.

¹⁵ *Id.* at *3–4.

¹⁶ *Robinson*, 2022 WL 1310977, at *2–3.

¹⁷ *Id.* at *3 (quoting *Greenfield v. Powell*, 118 So. 556, 558 (Ala. 1928)).

¹⁸ *See id.*

With this distinction in mind, the court rejected Robinson's argument that the timber companies failed to meet their burden at the summary judgment phase because they only showed that Robinson could not prove that the creek moved by avulsion.¹⁹ The timber companies did not prove that the creek changed course due to accretion.²⁰ However, the court explained that "ownership was an essential element or foundation of all of Robinson's claims," and therefore, Robinson was required to prove that Bassetts Creek moved by avulsion.²¹ Accordingly, the court determined that the timber companies "did not have to submit evidence of accretion" but could instead demonstrate that Robinson lacked evidence of ownership.²²

Robinson also argued that the timber companies failed to meet their summary judgment burden of proof because "they relied on a presumption in favor of accretion (rather than avulsion) that has not been recognized in Alabama."²³ Such a presumption would allocate the burden of proof to the party that did not initially bear it.²⁴ The court determined that, while unrecognized in Alabama, this presumption was not essential to the timber companies' case because Robinson already had the burden to prove ownership and avulsion; thus, the presumption was unnecessary to impose this burden on Robinson, and the court did not have to adopt or reject the presumption in this case.²⁵

After determining that Robinson, rather than the timber companies, had the initial burden to prove ownership, the court concluded that the timber companies met their summary judgment burden.²⁶ Accordingly, Robinson was required to "submit substantial evidence (1) that Bassetts Creek had moved from the old creek bed to its current location and (2) that it had done so by avulsion."²⁷ To satisfy this burden, Robinson provided six pieces of evidence: the 2012 deed conveying thirty-nine acres; a survey of his property indicating that the creek "juts out almost perpendicular to the original creek bed"; an affidavit of his expert witness testifying to the validity of the survey; his deposition

¹⁹ *Id.* at *4–5.

²⁰ *Id.* at *3.

²¹ *Id.* at *4.

²² *Robinson*, 2022 WL 1310977, at *4 ("Indeed, Robinson's argument would improperly place on the timber companies a burden to affirmatively disprove that he owned the disputed property.").

²³ *Id.* (alteration in original).

²⁴ *Id.* (citing Ala. R. Evid. 301(b)).

²⁵ *Id.*

²⁶ *Id.* at *5.

²⁷ *Id.*

testimony that, according to a surveyor, the creek “moved in 1927 or 1929”; a news article reporting heavy flooding in the county in January 1926; and his deposition testimony that his grandfather showed him that the property’s boundaries were the old creek bed.²⁸

First, the court analyzed Robinson’s 2012 deed and determined that, while the quantity designation suggested that the creek had moved, it did not demonstrate the manner in which it moved.²⁹ Next, Robinson argued that based on the property survey, a fact-finder could infer that avulsion created the perpendicular angle of the current channel of Bassetts Creek.³⁰ The court rejected this proposed inference after determining that it required specialized knowledge beyond that of a layperson, and Robinson failed to provide expert testimony to support the inference.³¹ Instead, Robinson relied on *Nesbitt v. Wolfkiel*—an Idaho case that found that a river’s new channel was substantial evidence of avulsion—to support the inference.³² Because there was no indication that the *Nesbitt* court’s rationale was solely based on a sudden change of the river’s direction, however, the court determined that *Nesbitt* was insufficient to support Robinson’s inference.³³

The court then considered the expert witness’s affidavit testifying to the validity of the property survey, including the “property boundaries and creek locations,” but like the 2012 deed, the affidavit failed to opine on *how* the creek bed moved.³⁴ Similarly, the court determined that Robinson’s deposition testimony—which explained that Harri-gan’s surveyor, Ralph McVay, told Robinson that the creek changed course in 1927 or 1929—did not necessarily imply that the creek moved by avulsion.³⁵ The court noted that even if this assumption were true, Robinson failed to present this evidence to the circuit court in a timely manner, so the court was free to disregard the testimony, which it presumably did.³⁶

²⁸ *Robinson*, 2022 WL 1310977, at *5–7.

²⁹ *Id.* at *5.

³⁰ *Id.*

³¹ *Id.* (“For a fact-finder to make an inference that requires knowledge beyond that of the ordinary layperson, the inference must be supported by expert testimony.” (citing 32 C.J.S. Evidence § 915 (2020))).

³² *Id.*; see *Nesbitt v. Wolfkiel*, 598 P.2d 1046, 1049 (Idaho 1979).

³³ *Robinson*, 2022 WL 1310977, at *5; see *Nesbitt*, 598 P.2d at 1049.

³⁴ *Robinson*, 2022 WL 1310977, at *6.

³⁵ *Id.*

³⁶ *Id.* The circuit court did not indicate that it considered this testimony when it denied Robinson’s motion to reconsider the summary judgment, so the Alabama Supreme Court presumed that the circuit court disregarded the testimony. *Id.*

The court also determined that Robinson's evidence of a local 1926 news article reporting flooding in the county was not sufficient evidence that Bassetts Creek changed course due to avulsion because the article did not mention the creek but instead mentioned the Tombigbee River—an entirely different body of water.³⁷ Robinson improperly relied on the article to corroborate McVay's testimony regarding the creek moving in 1927 or 1929 because the circuit court properly did not consider that evidence.³⁸

Finally, the court considered Robinson's deposition testimony that his grandfather showed him that the boundary of the property was the old creek bed.³⁹ The court noted that while this evidence indicated that the creek did change course, it did not demonstrate that the creek moved by avulsion.⁴⁰ In addition, Robinson failed to timely present the evidence of his grandfather's statement to the circuit court, so the court was again "free to disregard it."⁴¹

While Robinson attempted to meet his burden of proof by presenting these six pieces of evidence, the Alabama Supreme Court upheld summary judgment after concluding that Robinson failed to provide substantial evidence of ownership.⁴² The court determined that Robinson failed to conclusively show that Bassetts Creek moved due to avulsion rather than accretion, and therefore, under the common-law rule, Harrigan owned the disputed property and Robinson's claims failed.⁴³ Thus, the Alabama Supreme Court affirmed the circuit court's grant of summary judgment in favor of the timber companies.⁴⁴

Although the Alabama Supreme Court's decision in *Robinson v. Harrigan Timberlands Limited Partnership* did not establish new law, it reaffirmed the standard for Alabama Rule of Civil Procedure 56(c) that once the movant for summary judgment meets the prima facie burden, the nonmovant must provide substantial evidence of the issue in dispute and may not rely on mere allegations in the pleadings.⁴⁵ Requiring a heightened burden of proof for plaintiffs responding to motions for summary judgment maintains the purpose of the justice system by providing plaintiffs their day in court while simultaneously

³⁷ *Id.* at *7.

³⁸ *Id.*

³⁹ *Robinson*, 2022 WL 1310977, at *7.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Ala. R. Civ. P. 56(c).

avoiding frivolous lawsuits that only serve to burden opposing parties and the court system. Thus, *Robinson* is a helpful case, not because it creates new caselaw, but because it illustrates the burden-shifting framework of the summary judgment stage and how the court will analyze these burdens.