# The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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*Unbiased and Independently Researched Jury Verdict Results*

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## Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.



**Fraud - A couple purchased a house based on repeated assurances they would be able to operate a daycare center in it; the couple blamed the realtor when their plans were later blocked by a zoning snafu**
*Watts v. Realty Executives of Tuscaloosa, et al.*, 03-470
Plaintiff: John A. Owens, *Owens & Millsaps*, Tuscaloosa
Defense: C. Peter Bolvig, *Hall Conerly & Bolvig*, Birmingham, for Realty Executives and Denney; Stanley A. Cash and Charles J. Fleming, Jr., *Huie Fernambucq & Stewart*, Birmingham, for Kizziah and Southern Breeze
Verdict: $70,000 for plaintiffs against Realty Executives and Denney; defense verdict for Kizziah and Southern Breeze
Circuit: **Tuscaloosa**, 10-20-05
Judge: Thomas S. Wilson
Charles and Jacquelyn Watts operated a daycare center out of their mobile home in the city of Vance. Eventually, they decided to upgrade their operation by moving from the mobile home into an actual house.

The particular house the Wattses had in mind was located at 10955 Vance Street in the Whispering Meadows subdivision. It was a new house that had been built by a company owned by Dwight Kizziah and called Southern Breeze Homebuilders, Inc.

In November of 2000, the Wattses met with Cindy Denney, a real estate agent employed by Realty Executives of Tuscaloosa. The Wattses expressed interest in purchasing the house, but they made it clear the purchase was to be contingent on their being able to get a license to operate their daycare center.

According to the Wattses, Denney assured them there would be no problem with getting such a license. Based on that assurance, the Wattses bought the house on 11-27-00 and had the closing on 2-7-01. Immediately upon taking possession of the house,

the Wattses began remodeling it to meet the needs of the daycare operation.

Around this time, the Wattses began hearing rumors that there might be some zoning problems with their plans. The Wattses again consulted with Denney and with the builder, Kizziah. Allegedly, the Wattses were again assured there would be no problem.

Just to be on the safe side, the Wattses took the precaution of consulting with Keith Mahaffey, the mayor of the city of Vance, about the situation. Mahaffey also thought there would be no problem with opening the daycare center. However, Mahaffey referred the Wattses to Benny Marsh, the zoning administrator for the city, for an expert opinion. Marsh also told the Wattses he did not foresee any zoning problem with their plans.

Based on these repeated assurances from all parties concerned, the Wattses continued with the remodeling of the house. Once the work was completed, they applied for a "Validation of Zoning" as a necessary precondition for getting the actual daycare license. It was only then that Marsh informed the Wattses that his initial interpretation of the zoning regulations might have been incorrect.

At a meeting of the Planning Commission on 2-28-02, Marsh informed the Wattses that their application for the Validation of Zoning had been denied. Reportedly, one of the members of the commission said the Wattses were "like a hog trying to get its nose through the gate."

The Wattses appealed the commission's decision through the various administrative channels, but their efforts proved unsuccessful. Having thus found themselves unable to open the daycare center as planned, the Wattses defaulted on their loan with a balance due of $151,528. The house was subsequently the subject of a foreclosure proceeding in April of 2003.

The Wattses filed suit against Denney, Realty Executives, Kizziah, Southern Breeze, Mahaffey, Marsh, and the City of Vance. Among the various causes of action the Wattses cited were fraud, breach of contract, negligence and wantonness, conspiracy, suppression, and defamation.

The substance of theses claims was that defendants induced the Wattses into purchasing the home based on assurances they could open their daycare center. Those assurances turned out to be false, and the Wattses suffered because of it.

During the course of the litigation, the court granted defendants a partial summary judgment on the issues of suppression and conspiracy. That left only fraud, breach of contract, negligence and wantonness, and defamation. There was also a bit of a shake-out in terms of the party defendants.

Mahaffey, Marsh, and the City of Vance successfully argued that the Wattses failed to file a verified statement of claim within the statutory six month time limit. As a result, the claims against those defendants were dismissed on summary judgment for being time barred. The remaining defendants were Denney, Realty Executives, Kizziah, and Southern Breeze.

Kizziah and Southern Breeze denied ever giving the Wattses any assurances about zoning issues. Rather, all they said was that there was nothing in the subdivision's restrictive covenants that would prohibit the opening of a daycare center.

Defendants pointed out that this representation was correct, and it had nothing to do with the city's zoning decision. In fact, Kizziah tried to help the Wattses convince the Planning Commission to rule in favor of the project. Denney and Realty Executives also defended the case and denied any wrongdoing.

The case was tried to a jury in Tuscaloosa. The verdict was for the Wattses against Denney and Realty Executives, but Kizziah and Southern Breeze were exonerated. The jury awarded the Wattses damages of $35,000 against Denney and another $35,000 against Realty Executives.

The court entered a consistent judgment. However, that judgment was latter vacated by agreement of the parties in lieu of any post-trial motions or an appeal.

## Auto Negligence - An open leg fracture was valued at $75,000 in Birmingham; that figure represented approximately twice plaintiff's medical expenses

*Dunaway v. McPherson*, 04-311
Plaintiff: Henry Cornelius, *Marsh Rickard & Bryan*, Birmingham
Defense: Aubrey J. Holloway, *Gaines Wolter & Kinney*, Birmingham
Verdict: $75,000 for plaintiff
Circuit: **Jefferson**, 7-29-05
Judge: Robert S. Vance

On 10-24-02, Charles Dunaway was driving on Mt. Olive Road between the intersections of Warrior Jasper Road and Nail Road in Jefferson County. His front seat passenger was his 15 year-old brother, Jason. An instant later, they collided with a vehicle being driven by David McPherson.

Charles and Jason were taken by ambulance to the Carraway Methodist Medical Center in Birmingham. Jason was treated for a dislocated jaw and was given 12 stitches for a cut to his forehead. He was then given pain medications and discharged. Despite his treatment, Jason complains of recurring headaches and a back injury.

Charles's injuries seem to have been more serious. He suffered an open fracture of his right tibia/fibia, for which he received immediate surgery. He also had cuts to his forehead and left knee. Charles's medical expenses came to $34,608; Jason's medicals are unknown.

Charles and Jason filed suit against McPherson and blamed him for the crash. They also presented a claim for uninsured/underinsured motorist benefits against their insurer, State Farm. However, State Farm opted out of the case.

During the course of the litigation, Jason settled his claim for $15,000 (after deduction for attorney fees and various expenses, he will actually receive $7,162). The case then proceeded on Charles's claim. His accident reconstructionist was Edward L. Robinson of Birmingham.

McPherson defended the case and minimized the claimed damages. His identified expert was accident reconstructionist Ben Carr.

The case was tried in Birmingham and resulted in a verdict for Charles. The jury awarded him damages of

$75,000. The court entered a consistent judgment for that amount and also memorialized the settlement agreement relating to Jason's claim.

## Sidewalk Negligence - An elderly woman tripped on a sidewalk in front of a grocery store and fell to the ground; she blamed her injuries on the town for failing to maintain the sidewalk in a safe condition

*Cameron v. Town of Reform*, 00-32
Plaintiff: Frank M. Cauthen, Jr., Tuscaloosa; Joe L. Leak, *Friedman Leak & Bloom*, Birmingham; and John Earl Paluzzi, *Kirksey & Paluzzi*, Carrollton
Defense: John D. Gleissner, *Rogers & Associates*, Birmingham
Verdict: $40,675 for plaintiff
Circuit: **Pickens**, 3-8-05
Judge: James W. Moore, Jr.

Idella Cameron, age 73, was a regular customer at Ashmore's Associated Foods in the town of Reform. It was Cameron's habit to shop at the store at least once or twice a month. On 5-10-99, Cameron was once again out to purchase some groceries at Ashmore's. On this particular occasion, Cameron was driven to the store by her daughter, Patricia Richardson.

The two planned to make efficient use of their time by doubling up on their respective errands. They agreed that while Cameron went shopping in Ashmore's, Richardson would visit the cleaners nearby. It is significant to this case that the two establishments were located on the town square.

Cameron and Richardson arrived on the scene and parked in a space between Ashmore's and the cleaners. After disembarking from the vehicle, Richardson proceeded into the cleaners while Cameron headed toward Ashmore's according to plan. She never made it.

Cameron took no more than two or three steps when she stubbed her foot on a raised spot in the sidewalk just outside the entrance to Ashmore's. Cameron fell to the ground and sustained injuries to her right hand, arm, and shoulder. Her medical expenses are unknown.

Cameron filed suit against the town of Reform and criticized its failure to maintain its sidewalks in a safe condition. More specifically, Cameron claimed the uneven condition of the sidewalk amounted to violations of various statutes and regulations concerning such matters.

The town defended the case and denied any wrongdoing. It explained that the town's building and licensing inspector inspects the sidewalks two or three times each week. If repairs are needed, the inspector notifies the mayor.

The town noted that no one had previously complained about this particular sidewalk. Thus, the town had no notice of any defective condition. In fact, the town denied there was any defective condition to find.

Instead, the town suggested Cameron had simply tripped over a seam that was created when the concrete for the sidewalk was originally poured. It would be ludicrous, the town argued, to hold it responsible for every crack, expansion joint, and seam in every sidewalk.

Finally, the town noted that merchants can maintain the sidewalks in front of their stores. Thus, if there was a defect in the sidewalk in front of Ashmore's, then it is Ashmore's that should be liable for it.

The case was originally tried to a jury in Carrollton in March of 2004. For reasons the record does not explain, that attempt resulted in a mistrial. The case was later retried a year later and resulted in a verdict for Cameron. The jury awarded her damages of $40,675, and the court's consistent judgment for that amount followed.

## Race Discrimination - Four white firefighters alleged they were passed over for promotion, the fire chief selecting a less-qualified black applicant

*Stringfellow et al v. City of Mobile*, 1:04-281
Plaintiff: Richard W. Fuquay and Edward L.D. Smith, Mobile
Defense: Paul K. Carbo and Andrea L. McClellan, *The Atchison Firm*, Mobile
Verdict: $540,000 for plaintiffs ($135,000 to each of four plaintiffs)
Federal: **Mobile**, 12-9-05
Judge: Callie V.S. Grande

In 2003, there were four openings for promotion to District Chief within the Mobile Fire Department. The fire chief, Steve Dean, considered a list of ten applicants that was provided by the Personnel Board. Nine of ten applicants were white, the sole black being Johnny Morris.

Dean conducted interviews and made his selection. He promoted three white applicants as well as Morris. The decision to hire the white applicants was not at issue in this case – the promotion of Morris would be challenged.

Four white fire employees, Melvin Stringfellow, Stanley Vinson, Kenneth Tillman and Onrie Brown, all of whom were ranked higher than Morris by the Personnel Board, alleged they were victims of reverse race discrimination. Dean's preference to promote a black applicant clouded his judgment, permitting the less qualified, less highly-ranked and less experienced Morris to be promoted.

The plaintiffs' theory alleged both direct and circumstantial proof. The direct proof came from a fire captain who recalled a conversation with Dean – in it Dean told her he wanted to promote a black applicant. Tying to circumstantial proof, plaintiffs developed that Dean was apparently cowed by black city council members who wanted a minority promoted.

In characterizing their case, plaintiffs argued that while Dean didn't have an evil motive, he was weak and should have stood up to the interference by the council. If the plaintiffs prevailed, they sought lost wages and emotional distress damages.

The fire department defended the hiring decision and explained race had nothing to do with it. Dean, the ultimate decision-maker, had specific explanations for why he rejected the plaintiffs and instead picked Morris. Part of that analysis by Dean focused on the fact that he didn't just consider the Personnel Board ranking and test scores (Morris wouldn't have been selected if he did), but rather a broad spectrum of factors including demeanor and the ability to handle difficult tasks – Dean's relied on his subjective evaluations of the applicants and concluded Morris should be promoted. The fire department conceded that even if this decision was misguided or wrong, race had nothing to do with it.

Mobile also defended the notion that all four plaintiffs could prevail at trial –