

Alabama Rules of Civil Procedure

VI. TRIALS

Rule 52.

Findings by the court; judgment on partial findings.

(a) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury, the court may upon written request and shall when required by statute, find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court may similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Where the court makes findings of fact based upon determinations of credibility drawn from its observation of witnesses, those findings shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) *Amendment.* Upon motion of a party filed not later than thirty (30) days after judgment or entry of findings and conclusions the court may amend its findings or make additional findings or may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment or a motion for a new trial.

(c) *Judgment on partial findings.* If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment may be supported by findings of fact and conclusions of law.

(dc) *District court rule.* Rule 52 applies in the district courts except that the time period of thirty (30) days in Rule 52(b) is reduced to fourteen (14) days in all cases except unlawful-detainer actions subject to appeal under §6-6-350, Ala. Code 1975, and eviction actions subject to appeal under § 35-9A-461, Ala. Code 1975, in which actions the time period is reduced to seven (7) calendar days.

[Amended 3-1-83, eff.7-1-83; Amended eff. 10-1-95; Amended 5-29-2009, eff. 7-1-2009; Amended eff. 11-28-2012.]

Committee Comments on 1973 Adoption

The Rule provides for findings in all cases tried to the Court without a jury where a statute provides for findings. In other situations, the court renders findings in its discretion.

Where findings and conclusions have been requested and the request has been granted, the commingling of findings and conclusions in the order is not ground for reversal. See *McCrea v. Harris County Houston Ship Channel Navigation District*, 423 F.2d 605 (5th Cir.1970).

The scope of review under present Alabama practice prevents reversal of the trial court's findings where the evidence was taken in open court, or partly so, and the trial court has had the advantage of seeing the witnesses, unless the trial court's conclusion is plainly and palpably contrary to the weight of the evidence. *Albright Equipment Co., Inc. v. Waddell*, 284 Ala. 329, 224 So.2d 878 (1969). See also *Lott v. Keith*, 286 Ala. 431, 241 So.2d 104 (1970). Such findings have the force of a jury verdict. *Renfroe v. Weaver*, 285 Ala. 1, 228 So.2d 764 (1969). However, the Supreme Court of Alabama has not clothed the trial court's findings with such a presumption where the evidence is entirely in writing (depositions, pleadings, stipulations, etc.). *Smith v. Dalrymple*, 275 Ala. 529, 156 So.2d 622 (1963); *Hackett v. Cash*, 196 Ala. 403, 72 So. 52 (1916).

Federal Court construction of the Rule 52 requirements with respect to the presumption attached to the trial court's findings has produced a conflict in the circuits. For the proposition that the appellate court cannot set aside findings based entirely on documentary evidence unless "clearly erroneous" see Judge Clark's concurrence in *Heim v. Universal Pictures Co.*, 154 F.2d 480, 491 (2d Cir.1946). As draftsman of the Rule, his opinion is given support. See, e.g., *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 437 F.2d 244 (6th Cir.1971); *United States Steel Corp. v. Fuhrman*, 407 F.2d 1143 (6th Cir.1969), cert. denied 398 U.S. 958, 90 S.Ct. 2162, 26 L.Ed.2d 542. For the proposition that Rule 52, F.R.C.P. does not require the "clearly erroneous" presumption when evidence is documentary, in whole or in part, see Judge Frank's opinion in *Orvis v. Higgins*, 180 F.2d 537 (2d Cir.1950), cert. denied 340 U.S. 810 (1950), 71 S.Ct. 37, 95

L.Ed. 595. This position is supported by Moore's *Federal Practice*, ¶ 52.04, p. 2688. See also, *Caradelis v. Refineria Panama*, 384 F.2d 589 (5th Cir.1967).

The 1955 United States Supreme Court Advisory Committee recommended clarification of Rule 52 so as to attach the presumption to all cases, regardless of whether the evidence was oral or documentary. The Supreme Court declined to follow this recommendation. The prevailing Alabama view falls in between the Clark view and the Frank view of Rule 52 in that the presumption attaches when the testimony is partially oral. *Lott v. Keith*, supra.

Rule 52 attaches a presumption to the findings of a master to the extent that the trial court has adopted them. Under present Alabama practice, de novo appellate review is available when evidence has been taken before a commissioner. *Pierce v. Murphree*, 274 Ala. 20, 145 So.2d 207 (1962); *Porter v. Roberson*, 263 Ala. 294, 82 So.2d 244 (1955). However, a reference before a Register wherein oral evidence is taken is afforded the same presumption as a jury's verdict, and, therefore, the trial court's findings. *Davis v. Davis*, 274 Ala. 277, 147 So.2d 828 (1962); *Sellers v. Locke*, 208 Ala. 169, 93 So. 876 (1922).

The Rule renders findings and conclusions unnecessary on Rule 56 (Summary Judgment) Motions. Routine solicitation of proposed findings and conclusions as to such motions is therefore inappropriate.

Subdivision (b) of Rule 52 seems to provide adequate safeguards to all parties and to the court for the amendment of findings after judgment. The time limit for a motion to accomplish that objective is 30 days after judgment, which is the time limit for filing motions for new trial, although motions for new trial are not prerequisite to appeal if all grounds for review have already been presented to the trial court, in a doubtful case it would be good practice to do so. See 6A Moore's *Federal Practice*, ¶ 59.14 (2d ed. 1971). Under Rule 58(a), the court, on a motion for new trial, may amend findings and conclusions or make new findings and conclusions and direct the entry of a new judgment. This procedure provides adequate means of supplying any such deficiencies in preparation for appeal.

Committee Comments to October 1, 1995, Amendment to Rule 52

Subdivision (a). The amendment to the third sentence more accurately states the effect of the ore tenus rule under Alabama practice.

Subdivision (c). This amendment incorporated a recent amendment and a proposed amendment to F.R.Civ.P. 52(c). It effects a transfer from former Ala.R.Civ.P. 41(b) of the vehicle for obtaining a judgment for failure of proof in a nonjury case. It preserves the present Alabama rule under which the making of findings and conclusions is discretionary.

**Committee Comments to the July 1, 2009,
Amendment to Rule 52(dc)**

All judgments entered by a district court in unlawful-detainer actions, residential and commercial, are subject to the 2006 amendment to § 6-6-350, Ala. Code 1975, which reduced the appeal time from 14 to 7 days for appeals of such judgments to the circuit court. Rule 52(dc) has been amended to require postjudgment motions in unlawful-detainer actions under this rule to be filed within the seven-day appeal period. If filed within that period such motions will be subject to the provisions of Rule 59.1(dc) regarding the disposition of posttrial motions.

**Committee Comments to Amendment to Rule 52(dc)
Effective November 28, 2012**

Issues have been raised regarding the applicability in the district court of certain rules of procedure to possessory actions for eviction under the Alabama Uniform Residential Landlord and Tenant Act, Ala. Code 1975, §35-9A-101 et seq., as amended, and to possessory actions for unlawful detainer under Ala. Code 1975, §6-6-310(2). This amendment addresses those issues.

First, language has been added to the (dc) provision of Rule 52 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, with regard to computation of time in eviction and unlawful-detainer actions, the amendment makes it clear that the exclusion in Rule 6(a) of Saturdays, Sundays, and legal holidays for the computation of periods of less than 11 days has no application to the computation of any time periods in the district court in possessory actions for eviction or unlawful detainer and that "day" means "calendar day" in those computations.

Note from the reporter of decisions: The order amending, effective July 1, 2009, Rule 52(dc), Rule 55(dc), Rule 58(b), and Rule 59(dc), and adopting effective July 1, 2009, the Committee Comments to the July 1, 2009, Amendment to Rule 52(dc), the Committee Comments to the July 1, 2009, Amendment to Rule 55(dc), and the Committee Comments to the July 1, 2009, Amendment to Rule 59(dc) is published in that volume of *Alabama Reporter* that contains Alabama cases from 7 So. 3d.

Note from the reporter of decisions: The order amending, effective November 28, 2012, Rule 6(dc), Rule 12(dc), Rule 52(dc), Rule 55(dc), Rule 59(dc), and Rule 62(dc), and adopting the Committee Comments to the Amendment to Rule 6(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 12(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 52(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 55(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 59(dc) Effective November 28, 2012, and the Committee Comments to the Amendment to Rule 62(dc) Effective November 28, 2012, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.